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TAXES, SOCIAL POLICY AND PHILANTHROPY: THE UNTAPPED POTENTIAL OF MIDDLE- AND LOW-INCOME GENEROSITY

Alice Gresham Bullock†

He looked and saw rich people putting their gifts into the treasury; he also saw a poor widow put in two small copper coins. He said "Truly I tell you, this widow has put in more than all of them; for all of them have contributed out of their abundance, but she out of her poverty has put in all she had to live on."¹

I. INTRODUCTION

In recent years, public attention has focused on two areas of potential policy reform: taxation and welfare. The two issues are inextricably linked, and responsible reform requires considering the overlapping consequences of change in both areas. Such reform is likely to have consequences for the role of private philanthropy. As charities increasingly assume responsibility for the public safety net, renewed attention should focus on the appropriate tax treatment of individual charitable contributions.

The current debate surrounding tax reform is primarily about whether a consumption tax should replace our current income tax. Two consumption tax bills have been introduced in Congress within the past year: an Unlimited Savings Allowance² (USA) and a flat tax.³ The cur-

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¹ *Luke* 21:1-4 (New Revised Standard Version).

² S. 722, 104th Cong. (1995). This bill was introduced by Senators Pete Domenici (R-N.M.), Sam Nunn (D-Ga.), and Bob Kerry (D-Neb.) on April 25, 1995. The USA combines a flat-rate subtraction method value added tax which, in the proposal, is called the "business tax," with a graduated tax on personal consumption which is called the "individual tax." For a complete description of the Unlimited Savings Allowance proposal by its sponsors, see Paul H. O'Neill & Robert A. Lutz, *United Savings Allowance (USA) Tax System*, 66 TAX NOTES 1482 (1995) (Special Supplement).

³ H.R. 2060, 104th Cong. (1995); S. 1050, 104th Cong. (1995). These bills were introduced on July 19, 1995, and were sponsored by House Majority Leader Richard Armey (R-Tex.), Senator Richard Shelby (R-Ala.), and Senator Larry Craig (R-Idaho). For a complete description of the proposal see Robert E. Hall & Alvin Rabushka, *The Flat Tax*, 68 TAX NOTES 643 (1995) (Special Supplement).

rent progressive income tax⁴ has been severely criticized. It has been blamed for the decline in savings by American households — a phenomenon that has been correlated to the declining investment of American businesses.⁵ The current system is also said to create economic disincentives and diminish productivity.⁶

Proponents of both the USA and flat tax proclaim the relative merits of a consumption tax.⁷ The proposals for consumption tax are designed to favor capital investment and encourage saving by eliminating the tax on each activity.

Further, the debate over tax reform is made more complex by the fact that our current system of taxation is not based purely on income taxation.⁸ In promotion of numerous valuable goals — both economic and social — it does not tax many items of income. Therefore, a major part of the debate over tax reform involves which, if any, of the economic and social goals should be achieved through deductions and exclu-

⁴ The progressive rate system can be contrasted with regressive and proportional tax systems. Although the total amount of tax paid to the government may rise, fall, or remain constant in a regressive system the rate of tax falls as income rises. Joseph Bankman & Thomas Griffith, *Social Welfare and the Rate Structure: A New Look at Progressive Taxation*, 75 CAL. L. REV. 1905, 1908 (1987). See generally W. BLUM & H. KALVEN, *THE UNEASY CASE FOR PROGRESSIVE TAXATION* 3 (1953). In a progressive tax system, higher income individuals pay a higher percentage of their income in taxes than those with lower incomes. A proportionate tax system — also known as a flat tax — requires all taxpayers to pay the same rate of tax per each defined monetary unit, despite differences in the total income received. *Id.*

Regressive and proportionate taxes may be implemented through a marginal rate structure like progressive taxes or through a combination of the marginal rate structure and cash payments. See generally Bankman & Griffith, *supra*, at 1945 (analysis of a model for implementing progressive income tax not through a rising marginal rate structure, but through a combination of "demogrants" and constant or declining marginal rates to achieve an optimal tax).

For an argument that apparent default assumption in favor of a proportionate tax is without merit, see *id.* at 1909.

⁵ John S. Nolan, *The Merit of an Income Tax Versus a Consumption Tax*, 71 TAX NOTES 1520, 1523 (1996).

⁶ But see Marjorie Kornhauser, *The Rhetoric of Anti-Progressive Income Tax Movement: A Typical Male Reaction*, 86 MICH. L. REV. 465 (1987) (concluding that the arguments against progressive taxation are overstated and based on an atomistic view of humanity; the feminist view of humanity not only supports but also mandates some progressivity).

⁷ The political debate has focused less on the distinction between an income tax and a consumption tax than it has on the desirability of a simple tax with flatter rates. The progressive income tax is often described as too complex, inefficient, and unfair. It is said to encourage tax evasion and result in costly and complicated efforts to prevent tax evasion. Both the USA and flat tax reform proposals claim to be fair, efficient, simple, and workable. Each proposal is designed to broaden the tax base by allowing few or no exclusions and deductions, thereby allowing the same revenue to be raised with lower rates. Proponents of the flat tax even suggest that it could be "so simple and at such a low rate that we might even disband the IRS." Nolan, *supra* note 5, at 1520.

⁸ See *infra* note 102 (explaining why the United States income tax system is not a "pure" income tax).

sions. For example, current deductions for charitable contributions⁹ support a huge network of socially desirable activities. Only the USA tax reform proposal provides an allowance for gifts to private charity, and it is in the form of a deduction.¹⁰

A. SHREDDING THE PUBLIC SAFETY NET

Political pressure to reform the federal tax system is almost as strong as the current political efforts to eliminate the social benefits that have been provided by the federal government since the New Deal.¹¹ As government funds for social and economic welfare are withdrawn, vital "life support" for hundreds of thousands of American people hangs in the balance.¹² Changes in our tax and social systems, as well as the impact of each one on the other, make it an appropriate time to reexamine the justifications for providing a tax allowance for charitable gifts.¹³ Such a reexamination is especially important because the government expects both individual and corporate contributors to fill the gap in the social and

⁹ Tax reform raises two direct challenges for charitable organizations and their donors. First, will a replacement for the income tax exempt nonprofits to the extent the current rules do, or will the new system shift some of the burden of raising revenue to nonprofits? Second, will the new system offer incentives for charitable giving, and will these incentives be as broadly based as the current incentives? This article addresses only the second question.

¹⁰ Much of the incentive for a charitable deduction may be lost under the USA Tax because the wealthy can avoid taxes entirely by distributing the maximum amount in the proposed unlimited IRA. Nolan, *supra* note 5, at 1521.

¹¹ See generally NEWT GINGRICH ET AL., *CONTRACT WITH AMERICA* (1994). As the official legislative agenda of Congress in 1995, the "Contract with America" led to far-reaching proposals to make fundamental changes in the way the government provides a safety net for America's poor people. It generated legislation that cut Aid to Families with Dependent Children, Medicaid, food stamps, housing, employment training, and other social programs. *Id.* at 65-77.

¹² See Jason DeParle, *Compassion Play: Less Is More; Faith and Facts in Welfare Reform*, N.Y. TIMES, Dec. 3, 1995, at A1:

The liberal's War on Poverty has been an unmitigated disaster. While the government has thrown trillions of dollars at the problem, the misery has only grown . . . No one likes the current system, which insults taxpayers and poor people alike . . . fixing it for the long term requires money — to subsidize jobs and provide child care to those required to take them.

See also Sarah Jay, *The Neediest Cases, Government Safety Net Cut, Charities Turn to the Public*, N.Y. TIMES, Dec. 3, 1995, at 49:

A meals-on-wheels program has lost a New York City grant that paid for nursing visits to homebound elderly. A social service program has lost city and state money that paid a social worker to visit six day-care centers, looking for signs of child abuse and neglect . . . Government efforts to overhaul poverty programs and balance budgets have eroded the resources of the charities whose programs provide a safety net for needy people . . .

See generally JULIAN WOLFERT, *WHAT CHARITIES CAN AND CANNOT DO, A TWENTIETH CENTURY FUND REPORT* (1996).

¹³ See Robert Carroll et al., *Impact of Structured Tax Reform on Nonprofit Organizations*, 95 TAX NOTES 1785, 1793 (1995) (Federal budget cuts in education, welfare, and the arts will put greater pressure on the nonprofit organizations to provide services).

economic welfare of the poor and other philanthropic beneficiaries.¹⁴ Charitable organizations deliver a significant amount of governmentally funded social benefits.¹⁵

Even if the current tax system is not reformed, other factors warrant another look at the propriety of the government's support for private charity through the tax system, as well as an examination of the form that support should take. A critical issue at the heart of the rhetoric of both social and tax reform is how the American government should meet the needs of its people — particularly those who have the least and are the most vulnerable.

Beginning with the New Deal and continuing with the programs of the Great Society, the federal government has continually expanded its social welfare activities. This expansion slowed dramatically when, in the 1980s, the Reagan administration reversed federal social policy. This conservative federal policy continued during the Bush administration, when it ordered budget cuts that fundamentally changed the reach and focus of federal social programs.¹⁶ Now, in the 1996 proposed budget, social welfare programs that aid lower income people the most will again suffer the deepest reductions.¹⁷ Unfortunately, even greater need exists today for services that aid families, children, and the elderly because the federal government already reduced its support.¹⁸ And it is estimated

¹⁴ Constance Casey, *Who Will Help the Helpers? Charity May Begin at Home But Not in the House Under Newt Gingrich*, SAN FRANCISCO EXAMINER, Jan. 22, 1995, at A4 (reporting that Newt Gingrich said on the day he assumed leadership of the House of Representatives, "I believe we should have a conscious strategy of dramatically increasing private charities"); Milt Freudenheim, *Charities Aiding Poor Fear Loss of Government Subsidies*, N.Y. TIMES, Feb. 2, 1996, at B8 (reporting that Republican presidential candidate Steve Forbes called for making it "possible for private charity to become more involved").

¹⁵ Most charities themselves rely heavily on government money. Many government programs are arrangements which exchange government resources to nonprofit organizations for the delivery of services through contracts and grants. The charity network is an arrangement of organizations that range from neighborhood settlement houses to the Salvation Army and the American Red Cross. All the organizations are run largely by professionals. Examples include research grants awarded to nonprofit universities, job training for disadvantaged workers who are under government contracts with community-based organizations like the Urban League, and nonprofit hospitals whose patient care is paid by Medicaid and Medicare.

¹⁶ For discussion of the course and consequences of shifts in domestic policy that occurred under the Reagan administration, see *THE REAGAN PRESIDENCY AND THE GOVERNING OF AMERICA* (Lester M. Salamon & Michael S. Lund eds., 1984).

¹⁷ Virginia A. Hodgkinson et al., *The 100 Nonprofit Organizations Study*, in *THE IMPACT OF FEDERAL BUDGET PROPOSALS UPON THE ACTIVITIES OF CHARITABLE ORGANIZATIONS AND THE PEOPLE THEY SERVE* 3, 9-10 (Independent Sector ed., 1995).

¹⁸ WOLPERT, *supra* note 12, at 12 (stating that Medicaid cuts could eliminate coverage for 4.4 million children and deny assistance to more than 16,000 homeless children by 2002); Constance Casey, *Cuts Leave Charities Wondering Where Next Meal Comes From*, TIMES-PICAYUNE, Oct. 22, 1995, at A1 (quoting Glenn Bailey: "As more people become ineligible for welfare, we'll have fewer resources and more to do."). See also Casey, *supra* note 14, at A4 (reporting that Scott Schaefer, director of an organization that reclaims and distributes surplus food, "worries that there will be a lot more people to feed and an increase in the number of

that a 120 percent increase in charitable contributions will be needed in 2002 to make up for the projected gap in government support.¹⁹ The history of charitable giving in America suggests that even if people increase their donations substantially, such growth cannot fill the gap.²⁰ As a result, charitable organizations will be forced to offer fewer services unless new sources of revenue materialize to cover the gap in federal funding.

The questions that are central to social reform are whether the federal government will: (1) continue to promote the general welfare of all its people; (2) encourage people to become self-reliant;²¹ and (3) encourage people to contribute to the well-being of those in need. There is little question that severe budget cuts to social programs will inundate charities with more people who need assistance to survive. Where will the money come from, charities are asking, to save those people from starvation, illness, or death?²² "And how, [charities] ask, are they expected to take up the slack when close to half of their budgets come from the government, much of that in the form of direct grants for services like foster care or elderly care?"²³ Some commentators believe that the government cannot lay the responsibility for caring for its people on the private sector.²⁴ However, many see welfare reform as the shock treatment needed to end welfare dependency. The idea is that such a dramatic change provides an impetus for finding new ways of helping people escape poverty.²⁵ "While the cornerstones of American charity today [may not] be built on neighbors caring for neighbors in tight little communities,"²⁶ policies must be created that help raise money for charities, support people's sense of self-reliance, and, at the same time, support

homeless people" and that "the number of people on the margins will be pushed into poverty").

¹⁹ Hodgkinson et al., *The Impact of Reductions of Federal Funding on the Independent Sector in THE IMPACT OF FEDERAL BUDGET PROPOSALS UPON THE ACTIVITIES OF CHARITABLE ORGANIZATIONS AND THE PEOPLE THEY SERVICE* 305, 306 (Independent Sector ed., 1995).

²⁰ See MARC BENEDICK & PHYLLIS LEVINSON, *PRIVATE SECTOR INITIATIVES OR PUBLIC PRIVATE PARTNERSHIPS?* 462-70 (1990) (describing empirical research tracing charitable contributions *per capita* for twenty-eight years (1955-1983) after adjusting for inflation). The long-term trend reflected substantial growth in charitable contributions, with the 1983 level 85.8 percent higher than the 1955 level. The rate of increase outstripped total incomes *per capita* which grew by only 58.7 percent during the same period. It is also important to note that "increases in private giving coincided with growth in total federal expenditures per capita, which rose 125 percent over the same period."

²¹ See generally Patricia Williams, Editorial, *The Saints of Servitude*, N.Y. TIMES, Oct. 13, 1996, at 13.

²² Casey, *supra* note 14, at A4.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ See *Private Money Can't Fill The Welfare Gap, Charities Say*, SUNDAY GAZETTE MAIL, June 4, 1995, at A8.

people's sense of responsibility to others. The tax system can help provide the incentive to find new ways to help people help themselves.²⁷

B. THE UPSIDE-DOWN SUBSIDY

The current tax deduction for gifts to charity is troublesome and persistently criticized.²⁸ The tax system currently provides a deduction for private gifts to qualified charitable organizations.²⁹ However, gifts to individuals who deserve charity³⁰ are not deductible. The cost of giving to charity becomes cheaper only as the taxpayer's income rises, and taxpayers must be able to itemize in order to take the charitable deduction.³¹ An individual in a 15 percent tax bracket pays eighty-five cents for each dollar given to charity, while an individual in the 33 percent tax bracket only pays sixty-seven cents for the same one dollar gift. This upside-down subsidy gives the most tax benefit to those who need it the least.³² Moreover, a taxpayer who cannot itemize deductions pays the full dollar for the gift of a dollar. The result of this system is that people with high incomes decide which activities will "receive" public dollars through their charitable contributions.³³

This article argues, on tax and social policy grounds, for continuing to grant a tax allowance to individuals who contribute to charity. However, this practice should not continue in the form of the current deduction. Rather, this article argues for extending the allowance to middle and lower income taxpayers who, as a group, cannot take the current deduction. I premise this argument on the belief that where the federal government denies an allowance for gifts to charity by individuals who do not itemize their deductions, it violates the principle of distributional equity.³⁴ Evidence exists that middle- and low-income individuals — like high-income individuals — are sensitive to the cost of giving and should, therefore, have the same available tax allowance. In addition,

²⁷ Stanley A. Koppelman, *Personal Deductions Under An Ideal Income Tax*, 43 TAX L. REV. 679 (1988) (explaining that personal deductions are sometimes based on whether they encourage sound social or economic policy unrelated to tax policy considerations).

²⁸ Paul R. McDaniel, *Federal Matching Grants for Charitable Contributions: A Substitute for the Income Tax Deduction*, 27 TAX L. REV. 377, 395-96 (1992). See also Mark G. Kelman, *Personal Deductions Revisited: Why They Fit Poorly in an "Ideal" Income Tax and Why They Fit Worse in a Far From Ideal World*, 31 STAN. L. REV. 831 (1979).

²⁹ See *infra* note 39 and accompanying text for a discussion of qualified charities.

³⁰ Someone who is poverty-stricken, for example.

³¹ See *infra* note 55 and accompanying text for a discussion of requirements to itemize deductions.

³² See The Donee Group, *Private Philanthropy: Vital & Innovative? or Passive & Irrelevant?*, in Research Papers 49, 72 (Commission on Private Philanthropy and Public Needs & United States Department of Treasury ed., 1977).

³³ Kelman, *supra* note 28, at 856-58.

³⁴ Distributional equity is a concept of fairness which requires that similarly situated taxpayers be treated the same.

this article argues that when the federal government does not allow a tax deduction for middle- and lower-income individuals, it unfairly grants power and influence to high-income individuals to determine which charities are worthy of support. Moreover, denying tax relief to such a large segment³⁵ of the American people is plutocratic³⁶ and ignores the reality of the millions of Americans who pay taxes and can — and do — contribute significantly to charitable activities. In addition, tax relief for private gifts to charity by middle- and lower-income groups of taxpayers could encourage and affirm the work of volunteers who build and sustain institutions within their own communities that reduce problems of poverty, unemployment, and illiteracy.

Finally, this article discusses alternatives to the current deduction, including matching grants, nonitemizer deduction, a refundable credit, and a nonrefundable credit for gifts to qualified poverty relief organizations. It concludes that a refundable credit for gifts to charity is the superior solution, for it satisfies concerns about both equity and efficiency. A refundable credit will increase gifts to organizations that are expected to bridge the gap in the government's spending on social welfare.

II. TAX TREATMENT OF PRIVATE CHARITY

Internal Revenue Code (I.R.C.) section 501(c) exempts from income and transfer taxation the income of and the contributions received by qualified charitable organizations.³⁷ A tax deduction for gifts to a qualified charity has been permitted since 1917 when the federal government enacted legislation that protected private philanthropy from the impact of wartime tax rates.³⁸ In contrast, gifts to individuals — even needy, poor individuals — are not deductible. Only gifts to qualified organizations that are defined as charitable organizations³⁹ by the Inter-

³⁵ See *infra* note 53 and accompanying text for a discussion of the number of taxpayers who take the standard deduction and for a discussion of charitable donors who have no taxable income.

³⁶ See WALLACE MENDELSON, *CAPITALISM, DEMOCRACY AND THE SUPREME COURT* 1-18 (1960) (arguing that plutocracy has always ruled this country).

³⁷ I.R.C. § 501(c)(3) (1996) provides that exempt organizations include "[c]orporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes" Under § 511, unrelated business income of a charitable organization is taxed.

³⁸ War Revenue Act, ch. 63, § 1201(2), 40 Stat. 300, 330 (1917). Under this act, deductible contributions could be made to corporations or associations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or to societies that are organized for the prevention of cruelty to children or animals.

³⁹ In 1993, the Internal Revenue Service classified 1,118,131 organizations as tax-exempt. Of those, 575,690 were deemed "charities" under § 501(c)(3). ANN E. KAPLAN, AMERICAN ASS'N OF FUNDRAISING COUNSEL TRUST FOR PHILANTHROPY, *GIVING USA* 1995 30 (1995) [hereinafter *GIVING USA* 1995].

nal Revenue Service are deductible.⁴⁰ It is significant that the Code makes no distinction between charitable organizations that provide public goods⁴¹ and those that benefit the poor directly.⁴² This model of tax-favored philanthropy ignores the centuries-old patterns of giving practiced by a number of racial and ethnic minorities in the United States. The model also does nothing to encourage or affirm the needed giving of many American taxpayers, who may give only to individuals or to organizations that serve the poor.⁴³

Nonprofit institutions have come to play a major role — in partnership with governments — in providing a variety of public services.⁴⁴ Health, human and social services, colleges and universities, the arts, and community activities rely heavily on voluntary services.⁴⁵ In 1995, living people contributed \$143.9 billion to support charitable and religious organizations — 11% more than in 1994.⁴⁶ These individuals contribute about 88 percent of the money charities raise.⁴⁷ Myriad reasons motivate people to give. Because charitable contributions have a net cost even for taxpayers in the highest tax bracket, the motive is not exclusively tax-related. People also give because they are attached to a particular activity, cause, or institution, or because they have sense of social obligation.⁴⁸ While taxes may not be the primary motivation for charitable giving, they clearly affect the timing,⁴⁹ volume,⁵⁰ and distribution of these gifts.

⁴⁰ The deduction is codified at I.R.C. § 170. A charitable contribution is defined as a gift or contribution to "[A] corporation, trust, or community chest, fund, or foundation created or organized in the United States . . ." I.R.C. § 170(c)(2)(A) (1996).

⁴¹ See Peter J. Wiedenback, *Charitable Contributions: A Policy Perspective*, 50 Mo. L. REV. 85, 94 (1985) (services provided by charitable organizations are in the nature of public goods).

⁴² See, e.g., John K. McNulty, *Public Policy and Private Charity: A Tax Policy Perspective*, 3 VA. TAX REV. 229, 234-36 (1984).

⁴³ See *infra* notes 166-78 and accompanying text describing ethnic giving practices.

⁴⁴ See *supra* note 15 and accompanying text.

⁴⁵ Hodgkinson et al., *supra* note 19, at 305 (\$435 billion existed in the nonprofit sector in 1992, the major sources of which were government, 36.7 percent; private contributions, 9.3 percent; dues fees and charges and all other revenue, 54.0 percent).

⁴⁶ John Marawski, *A Banner Year for Giving*, CHRON. PHILANTHROPY, May 30, 1996, at 1. In 1995, corporate gifts totaled \$7.4 billion. *Id.*

⁴⁷ *Id.* at 27.

⁴⁸ For a summary of empirical findings relevant to understanding of altruistic behavior, see Bruce Bolnick, *Toward a Behavioral Theory of Philanthropic Activity*, in ALTRUISM, MORALITY AND ECONOMIC THEORY 197, 201-16 (Edmund S. Phelps ed., 1975).

⁴⁹ Marawski, *supra* note 46, at 27 (reporting that the strong performance of the stock market in 1995 accounted for increased donations by donors of appreciated securities because they could obtain bigger tax savings).

⁵⁰ *Id.* (reporting that 1985 was a banner year for giving). The debate on flatter tax rates "may have motivated some donors to give while taxes were at their current rates — and larger deductions remained intact." *Id.* See also WOLPERT, *supra* note 12, at 28 (estimating that if

Taxes can affect charitable contributions because they affect after-tax income and the net dollar cost of giving. For a taxpayer who itemizes, the deductibility of a charitable gift reduces the after-tax cost of contributing a dollar to less than one dollar. If the taxpayer's marginal rate is 39 percent, a donation to charity costs the taxpayer only 61 cents because 39 cents would have been paid in taxes in the absence of the gift. Higher tax rates, therefore, encourage giving because they affect the cost of giving.⁵¹ The practical effect of the current deduction is that a one dollar gift costs eighty-five cents for a family with a taxable income of \$25,000, but only 69 cents for a family with a taxable income of \$100,000.⁵² For a family that does not itemize its deductions, the cost of the one dollar gift is the full dollar. If contributions are deductible, making a gift reduces tax liability, and the after-tax cost of giving one dollar costs less than a dollar.

Currently, only taxpayers who itemize deductions receive a tax benefit for their gifts to charity. Of the 114,964,937 tax returns that were filed in 1994, there were only 33,017,754⁵³ — about 29 percent — which itemized. Roughly two-thirds of all individual taxpayers cannot itemize either because they have insufficient taxable income or because their deductions do not exceed the zero-bracket amount plus exemptions. In 1994, 81,947,182⁵⁴ taxpayers claimed the standard deduction.⁵⁵ This number means that many middle-income and few low-income individuals itemized their deductions.⁵⁶ The itemized deduction is virtually the

the deduction were eliminated, donations would shrink by one-third or \$20 billion among the 32 million taxpayers who itemize deductions).

⁵¹ But higher tax rates could also discourage giving by lowering after tax income.

⁵² These figures are for cash gifts.

⁵³ INTERNAL REVENUE SERVICE, STATISTICS OF INCOME BULLETIN 180 (1996).

⁵⁴ *Id.*

⁵⁵ I.R.C. § 63(b) defines the taxable income of an individual who does not itemize as adjusted gross income minus the standard deduction and the personal exemption of section 151. The adjusted gross income represents gross income minus business expenses, expenses attributable to the production of rent or royalty income, the allowed capital loss deduction, and certain personal expenses. A standard deduction is the minimum allowed to individual taxpayers as a deduction from adjusted gross income in arriving at taxable income and is designed to serve as an allowance for a certain level of personal expenses, including charitable contributions. Thus, only itemizers are permitted a deduction for charitable contributions. I.R.C. § 63(b)(1996).

The standard deduction was introduced in 1944 to reduce the need for individual record keeping. The deduction has slowly increased over the years to \$5,000 for married couples and \$3,000 for singles and of zero on the first \$5,000 of taxable income.

⁵⁶ Martin A. Sullivan, *The Average Tax Return: \$25,000 and No Deductions*, 71 TAX NOTES 1409 (1996).

There are two tiers of itemized deductions for individuals. Those deductions in the first tier are not subject to the 2% floor of I.R.C. § 67. Any deductions not specifically exempted from the impact of section 67 are treated as tier two deductions and are deductible only to the extent that they cumulatively exceed 2% of adjusted gross income. The charitable contribution deduction is a tier one deduction.

exclusive "domain of upper-middle income and upper-income taxpayers."⁵⁷ In 1993, 80,840,916⁵⁸ of 113,662,380⁵⁹ individuals took the standard deduction. 1993 income tax statistics reveal that \$100.6 billion was donated in that year.⁶⁰ More than 78.2 percent of that amount came from the 35.6 percent of all tax return filers who regularly contribute to charity.⁶¹ 60.8 percent of those regular contributors itemize, while 21.8 percent regularly contribute but are in the lower-income range and could not itemize deductions.⁶² 17.4 percent of the regular contributors sometimes itemize and sometimes take the standard deduction.⁶³ The end result: The charities of more than 10 percent of individuals who did not earn enough to file a tax return did not get a subsidy.⁶⁴

It is clear, then, that millions of middle- and low-income taxpayers who make charitable contributions do not receive the benefit of a tax deduction.

A. JUSTIFICATION FOR TAX ALLOWANCE

Literature on justifications for and against a tax deduction for private charity is abundant.⁶⁵ Essentially, the arguments that favor the tax allowance are based on the belief that it is wise public policy to encourage the creation and growth of philanthropic institutions. First, the deduction⁶⁶ is an efficient subsidy for public goods.⁶⁷ Second, it pro-

⁵⁷ *Id.*

⁵⁸ INTERNAL REVENUE SERVICE, *supra* note 53, at 180.

⁵⁹ *See id.*

⁶⁰ GIVING USA 1995, *supra* note 39, at 47. Total giving for 1993 has been estimated at \$101.2 billion. *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Some might argue that denying a charitable contribution deduction to poor individuals who do not file tax returns does not constitute discrimination because non-filers are not taxpayers and are therefore not similarly situated to wealthy taxpayers who benefit from the deduction. A more reasoned approach, however, would compare the after-tax dollar cost of charitable donations for both wealthy and poor individuals and conclude that poor individuals must pay more for the contributions they make.

⁶⁵ *See generally* Boris I. Bittker, *Charitable Contributions: Tax Deductions or Matching Grants?*, 28 TAX L. REV. 37 (1972); Martin Feldstein, *The Income Tax and Charitable Contributions: Part I — Aggregate and Distributional Effects*, 28 NAT'L TAX J. 81 (1975); Martin Feldstein, *The Income Tax and Charitable Contributions: Part II — The Impact on Religious, Educational and Other Organizations*, 28 NAT'L TAX J. 209 (1975); Mark P. Gergen, *The Case For A Charitable Contributions Deduction*, 74 VA. L. REV. 1393 (1988); Todd Izzo, *A Full Spectrum of Light: Rethinking the Charitable Contribution Deduction*, 141 U. PA. L. REV. 2371 (1993); McDaniel, *supra* note 28; John K. McNulty, *Public Policy and Private Charity: A Tax Policy Perspective*, 3 VA. TAX REV. 229 (1984); Wiedenback, *supra* note 41; Kelman, *supra* note 28.

⁶⁶ There is much debate about the efficacy of a deduction as the appropriate form for the subsidy. *See supra* note 28 and accompanying text.

⁶⁷ Gergen, *supra* note 65, at 1396.

motes cultural pluralism.⁶⁸ Third, a gift to private charity is not within the definition of income.⁶⁹

B. TAX SUBSIDY FOR PRIVATE CHARITY

The charitable tax deduction is premised on the idea that charities provide goods and services that the government cannot or does not want to administer, but nevertheless considers deserving of the government's support. The belief is that without a government subsidy, public goods and services would be under-funded or not funded at all because some people would refuse to pay for a good and instead rely on the other people who do — a phenomenon characterized as the "free rider" problem.⁷⁰ It is also true that there is no market to set a price for such public goods and that donors may under-give because they undervalue the collective good. Another often cited reason for under-giving is that the giver may miscalculate or undervalue collective goods because she does not recognize its secondary benefits to society. She may not recognize, for example, that education produces an informed, educated electorate and supports a skilled labor force.⁷¹ Subsidizing education promotes participation in democracy and workplace efficiency. Therefore, society benefits from subsidized education.

It has been suggested that private charity responds better than the government to the varied demands for public goods.⁷² A tax subsidy for private funding may be the most efficient way for a high-preference minority — faced with a disinterested majority — to fund the good at the desired level.⁷³ This argument implicitly suggests that without a tax subsidy, a high-preference minority will not voluntarily redistribute its wealth through charitable gifts at the required level.

Support for the tax subsidy is often founded on the theory that giving is a form of pleasure that would be lost if the donor were forced to

⁶⁸ Izzo, *supra* note 65, at 2393.

⁶⁹ William D. Andrews, *Personal Deductions In An Ideal Income Tax*, 86 HARV. L. REV. 309, 346 (1972).

⁷⁰ Harold M. Hochman & James D. Rodgers, *The Optimal Tax Treatment of Charitable Contributions*, 30 NAT'L TAX J. 1, 2 (1977). A free-rider is anyone who enjoys the benefit of a good or service without paying its cost. *Id.*

⁷¹ See generally THEODORE SCHULTZ, HUMAN CAPITAL 24-47 (1971).

⁷² Burton A. Weisbrod, *Toward A Theory of A Voluntary Nonprofit Sector in a Three-Sector Economy*, in THE ECONOMICS OF NONPROFIT INSTITUTIONS 21 (Susan Rose-Ackerman ed., 1986). See also BENEDICK & LEVINSON, *supra* note 20, at 470-76.

⁷³ Political systems harbor biases based upon predominate values, beliefs, rituals, and institutional procedures which operate consistently and systematically to the benefit of certain persons and groups and to the disadvantage of others. See generally PETER BACHRACH & MORTON S. BARATZ, POWER AND POVERTY: THEORY AND PRACTICE (1970). This truth is amply demonstrated in the politics that have been shifting the focus of government away from providing social benefits for a growing minority of poor people in this country.

pay for public goods through the market or a tax.⁷⁴ The allowance is also said to promote unselfish behavior.⁷⁵

C. CULTURAL PLURALISM

Private charity often supports socially desirable activities that are provided for neither by the government nor the market. "The deduction encourages [cultural] pluralism by permitting an assortment of social services; taxpayers are allowed in part to vote with their dollars, rather than by the one-person, one-vote system that establishes . . . budget priorities."⁷⁶

D. TAX ALLOWANCE SUPPORTED BY INTERNAL LOGIC OF TAX CODE

The internal logic of the tax code supports the current subsidy for charitable gifts. For example, there would be no reason for a section 501 exemption of the taxable income and gifts received by a charitable organization⁷⁷ if no allowance were permitted for contributions to such qualified organizations. The exemption suggests "a policy judgment that income arising in the private sector devoted to designated charitable purposes should not be burdened by an income tax."⁷⁸ It appears that, at a minimum, the exemption indicates that income of a charity allocated to certain charitable purposes should not be burdened by the income tax.⁷⁹ But it is also possible that the exemption reflects a judgment that such income does not represent "consumption" and should therefore be excluded from the tax base.⁸⁰

As much as possible, the tax result should be the same whether one contributes property, cash or services. A gift of services is not deductible,⁸¹ but a gift of cash or property is. In neither case, however, is the donee taxed upon the receipt.⁸² And in the case of a contribution of services, the donor is not taxed on the imputed income for the market value of the charitable services she rendered.⁸³ The unstated exclusion of imputed income that is derived from the gift of services seems to pro-

⁷⁴ See PAUL FRIERE, *PEDAGOGY OF THE OPPRESSED* 25-51 (1993) (calling this compulsion "false generosity").

⁷⁵ But see *infra* notes 121-39 and accompanying text that discusses the expectation of reciprocal benefit.

⁷⁶ Wiedenback, *supra* note 41, at 97.

⁷⁷ See *supra* note 39 and accompanying text.

⁷⁸ McNulty, *supra* note 42, at 232 (citation to I.R.C. omitted).

⁷⁹ *Id.*

⁸⁰ Andrews, *supra* note 69, at 309.

⁸¹ Treas. Reg. § 1.170A-1(g) (as amended in 1990).

⁸² I.R.C. § 102(a) (1996).

⁸³ McNulty, *supra* note 42, at 239. Ostensibly, there is nothing in the Internal Revenue Code that precludes taxing the value of services that are contributed to a charitable organization. See also Treas. Reg. § 1.61-2(c) (as amended in 1995).

vide symmetry to the deduction that is allowed the donor of cash or property. Thus, the tax law makes the choice to contribute services, cash, or property tax neutral.

E. A GIFT TO CHARITY IS EXCLUDABLE FROM THE TAX BASE

The charitable deduction is sometimes justified as necessary to accurately measure taxable income because the amount donated to charity is not available for savings or personal consumption.⁸⁴ Taxable income would be overstated without a deduction. The theory is that the income taxes "divert economic resources away from personal consumption and accumulation" to public use.⁸⁵ Thus, only the consumption of resources which divert "economic resources away from other people should be measured in assessing income taxes."⁸⁶ Charitable donations divert resources not to private, but public use. Thus, charitable gifts are not within the Haig-Simons definition of income.⁸⁷

III. DISTRIBUTIONAL EQUITY AND THE PROGRESSIVE RATE STRUCTURE

Commentators have severely criticized the current deduction for charitable contributions in part because it benefits most those who need it the least.⁸⁸ A progressive income tax system raises tax rates as income rises.⁸⁹ The current progressive income tax rate structure and the charitable deduction create the upside-down subsidy.⁹⁰

While the progressive rate structure is currently under siege,⁹¹ it has been part of the federal income tax system since its inception in 1913.⁹² However, it has long been controversial. In the words of John Stuart Mill, progressive income taxation is nothing more than "graduated rob-

⁸⁴ See Andrews, *supra* note 69, at 312. But see generally Kelman, *supra* note 28, at 831-58 (disagreeing with Andrews's definition of the appropriate tax base and believing that "a taxpayer's net receipts, receipts minus the cost of obtaining the receipts, tautologically consists of consumption plus savings"). According to the widely accepted definition of Robert Haig and Henry Simons, income is personal consumption plus changes in wealth for a specific period of time. See Robert Haig, *The Concept of Income — Economic and Legal Aspects*, in THE FEDERAL INCOME TAX 1,7 (Robert Haig ed., 1921); HENRY SIMONS, PERSONAL INCOME TAXATION 50 (1938).

⁸⁵ Andrews, *supra* note 69, at 325.

⁸⁶ *Id.* at 356.

⁸⁷ *Id.*

⁸⁸ See *supra* note 28 and accompanying text for a discussion of the upside-down subsidy.

⁸⁹ I.R.C. § 1 (1996).

⁹⁰ See *supra* note 28 and accompanying text.

⁹¹ See *supra* notes 4-5 and the accompanying text that explains the criticism surrounding progressive income taxation.

⁹² Income Tax Act of 1913, ch. 16, 38 Stat. 166 (1913).

bery."⁹³ What has permitted such a maligned system of taxation to exist for more than one hundred years, despite its economic disincentives, high cost, and complexity? The answer: An overriding concern for distributional equity.⁹⁴

Progressive taxation is said to promote distributional equity.⁹⁵ The progressive rate structure theoretically corrects financial inequality that is created by income maldistribution.⁹⁶ The justification is that the wealthy will lose less from sharing than the less wealthy will gain from receiving.⁹⁷ In addition, the equity of a progressive rate minimizes gross inequality in opportunity.⁹⁸

In theory, the progressive rate structure is a means of achieving relative equality.⁹⁹ One of the goals of the tax system is to reduce economic

⁹³ Richard Joseph, *Why Progressive Taxation?*, 70 TAX NOTES 313, 313 (1996) (quoting John Stuart Mill). See also Bankman & Griffith, *supra* note 4; Edwin R.A. Seligman, *Progressive Taxation in Theory and Practice*, 9 AM. ECON. ASS'N Q. 1 (1908); Walter J. Blum, *Revisiting the Uneasy Case for Progressive Taxation*, 60 TAXES 16 (1982); BLUM & KALVEN, *supra* note 4; Harold M. Groves, *Toward a Social Theory of Progressive Taxation*, 9 NAT'L TAX J. 27 (1956); Joel Slemrod, *Do We Know How Progressive The Income Tax System Should Be?*, 36 NAT'L TAX J. 361 (1993); Dan Throop Smith, *High Progressive Tax Rates: Inequity and Immorality?*, 20 U. FLA. L. REV. 451 (1968).

⁹⁴ See Bankman & Griffith, *supra* note 4, at 1910 (all tax rate structures must be premised upon and measured by a theory of distributive justice); Joseph, *supra* note 93, at 313 ("Equity is the key. . . for no system so patently 'inequitable' would have been tolerated by so egalitarian a people."). But see Jay M. Howard, *When Two Tax Theories Collide: A Look At The History and Future of Progressive and Proportionate Personal Income Taxation*, 32 WASHBURN L.J. 43 n.263 (1992) (citing ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, 1988 COMMISSION SURVEY — CHANGING PUBLIC ATTITUDES ON GOVERNMENTS AND TAXES (1988), which indicates that the public perceives the income tax to be the least fair of all taxes).

⁹⁵ Joseph, *supra* note 93, at 317. But see BLUM & KALVEN, *supra* note 4, at 74-78 (rejecting the argument that welfare would be improved by redistributing wealth from the rich to the poor); W. Allen Wallis, *The Case For Progressive Taxation, Easy or Uneasy?*, in INCOME REDISTRIBUTION 135 (Colen Campbell ed., 1977); James Gwarthy & James Long, *Is the Flat Tax A Radical Idea?*, 5 CATO J. 407, 413 (1985) (suggesting that annual income is not a sound measure for economic "well-being").

⁹⁶ See Bankman & Griffith, *supra* note 4, at 1915 ("[W]elfarist theories of distributive justice permit taxation either to finance public goods or to redistribute income, if the well-being of individuals in society is improved."); JOHN RAWLS, A THEORY OF JUSTICE 277-78 (1971) (arguing that one reason for the progressive tax is to level unequal distributions of wealth that result from gifts and bequests; such unequal distributions are undesirable because they lead to disparate political power).

The seven generally accepted criteria for assessing the tax structure are whether it: (1) supplies adequate revenue; (2) achieves a practical and workable system of income; (3) imposes equal taxes upon those who enjoy equal income; (4) assists in achieving economic stability; (5) reduces economic inequality; (6) avoids impairment of the market-oriented economy; and (7) accomplishes a high degree of harmony between the income tax and the political order. Joseph T. Sneed, *The Criteria of Federal Income Tax Policy*, 17 STAN. L. REV. 567, 568-97 (1965).

⁹⁷ BLUM & KALVEN, *supra* note 4, at 75.

⁹⁸ See *id.* at 77-79.

⁹⁹ See Joseph, *supra* note 93, at 318.

inequality and redistribute income and wealth to more disadvantaged members of society.¹⁰⁰ Redistribution is founded on the principle that individuals should pay taxes based on their ability to pay.¹⁰¹ While the progressive rate structure is designed so that the wealthy pay a higher percentage of their income in taxes, the tax rate does not reflect the actual distribution of the tax burden.¹⁰² Because the per-dollar tax savings for charitable contributions rise as one's marginal rate rises, high income taxpayers enjoy a proportionally larger tax deduction than lower income taxpayers. In other words, the price of giving becomes cheaper and cheaper as income increases.

The price of charitable giving is the net after-tax cost for the donor per dollar of donation.¹⁰³ To determine the impact of the tax deduction on charitable behavior, researchers have focused on the elasticity of charitable contributions.¹⁰⁴ If the absolute value of price elasticity¹⁰⁵ is greater than one, the charitable deduction induces more in donations than the amount the Treasury foregoes in revenue. On the other hand, if the absolute value of price elasticity is less than one, the deduction is not considered worthwhile because it does not tend to generate additional contributions.¹⁰⁶

It is generally accepted that the incentive tax effect of the charitable contributions deduction is relatively high for high-income taxpayers.¹⁰⁷ Commentators have routinely argued that low- and middle-income givers are not responsive to the price of giving¹⁰⁸ (that is, charitable behavior of low- and middle-income individuals is not affected by tax incentives).

¹⁰⁰ See BLUM & KALVEN, *supra* note 93, at 18-19. For a discussion of taxation and considerations of redistributing wealth, see McNulty, *supra* note 42, at 247-51.

¹⁰¹ Joseph, *supra* note 93, at 315-17. See also WILLIAM KLEIN, POLICY ANALYSIS OF THE FEDERAL INCOME TAX 14-20 (1976).

¹⁰² Congress defines taxable income to exclude many items included in the economic definition of income. Income set aside in qualified retirement plans is not taxed to the employee until withdrawn. Taxable income currently does not include owner-occupied home mortgage interest, employer-provided health insurance, disability insurance, or certain taxes. In addition, the rate structure does not take into account the amount of benefits individuals of different income classes receive from public services such as national defense, the judiciary, education, and health services.

For a discussion of conceptual problems related to defining "income," see A.B. ATKINSON, THE ECONOMICS OF INEQUALITY 35-60 (1983).

¹⁰³ Yong S. Choe & Jinook Jeong, *Charitable Contributions by Low- and Middle-Income Taxpayers: Further Evidence With A New Method*, 46 NAT'L TAX J. 33 (1993).

¹⁰⁴ CHARLES T. CLOTFELTER, FEDERAL INCOME TAX POLICY AND CHARITABLE GIVING 274 (1985).

¹⁰⁵ Price elasticity is the donor's responsiveness to the after-tax cost of giving.

¹⁰⁶ CLOTFELTER, *supra* note 104, at 281.

¹⁰⁷ Choe & Jeong, *supra* note 103, at 1. See also CLOTFELTER, *supra* note 104, at 57-59.

¹⁰⁸ See Henry Aaron, *Federal Encouragement of Private Giving*, in TAX IMPACTS ON PHILANTHROPY 210-11 (Tax Institute of America ed., 1972); Gerald Auten & Gabriel Rudney, *Charitable Deductions and Tax Reform: New Evidence on Giving Behavior*, in PROCEEDINGS OF THE SEVENTY-SEVENTH ANNUAL CONFERENCE 1984 73-82 (National Tax Association &

Consistent with this theory, no tax relief is provided for low- and middle-income taxpayers who cannot itemize deductions.¹⁰⁹ However, empirical studies support the view that the charitable behavior of low- and middle-income taxpayers is affected by the price of giving.¹¹⁰ The contradictory conclusions about the effect of tax incentives on middle- and low-income taxpayers are a function of bias inherent in the models used for estimating the effect of the tax deduction.¹¹¹ It appears that when adjustments are made to eliminate this identified bias, the findings support the conclusions that the charitable behavior of low- and middle-income taxpayers is indeed sensitive to the tax incentive.¹¹² Indeed, a recent study concludes that the actual charitable giving behavior of

Tax Institute of America eds., 1984); C. HARRY KAHN, NATIONAL BUR. OF ECON. RESEARCH, PERSONAL DEDUCTIONS IN THE FEDERAL INCOME TAX 72 (1960).

¹⁰⁹ A small above-the-line deduction was available to nonitemizers from 1982 to 1986. The deduction was 25% of total contributions limited to \$100 (\$50 for married people filing separately) in 1982-83, and \$300 (\$150 for married people filing separately) in 1984. The full deduction was supposed to take effect in 1986. It was eliminated by the Tax Reform Act of 1986. For an explanation of the repeal of the nonitemizer deduction, see Ronald A. Pearlman, *Repeal of the Charitable Contribution For Nonitemizers Explained*, 28 TAX NOTES 1140 (1985) ("While the proposal to repeal the nonitemizer deduction may have some adverse effect on the amount of charitable giving, we believe that contributions by nonitemizers, who generally have relatively low marginal rates, are not affected significantly by tax considerations."). See also Charles T. Clotfelter, *Impact of Charitable Giving: 1989 Perspective*, in DO TAXES MATTER? 203, 223 (Joel Slemrod ed., 1990).

¹¹⁰ Michael J. Boskin & Martin Feldstein, *Effects of Charitable Deduction on Contributions by Low Income and Middle Income Households: Evidence From the National Survey of Philanthropy*, 50 REV. ECON. & STAT. 351-54 (1978); Eleanor Brown, *Tax Incentives and Charitable Giving: Evidence from New Survey Data*, 15 PUB. FIN. Q. 386-96 (1987); Jerald Schiff, *Does Government Spending Crowd Out Charitable Contributions?*, 38 NAT'L TAX J. 535-46 (1985). See also William A. Luksetich & Nasser Daneshvary, *Prices of Giving, Income Sources and Declared Contributions* (paper presented at the annual meeting of the Association for Research on Nonprofit Associations and Voluntary Actions (ARNOVA), San Francisco, 1994).

¹¹¹ Brown, *supra* note 110, at 387-89 (suggesting that the "itemization effect" that reflects non-random selection in tax data that contains both itemizing and nonitemizing households is the problem); Choe & Jeong, *supra* note 103, at 34 ("To answer the question of why these studies produce such different results, it should be noted that there are two statistical problems in the estimation of the price elasticities . . ."); John R. Robinson, *Estimates of the Price Elasticity of Charitable Giving: A Reappraisal Using 1985 Itemizer and Nonitemizer Charitable Deduction Data*, 12 J. AM. TAX'N ASSOC. 39, 56-57 (1990) (asserting that the significant differences in price elasticities between itemizers and nonitemizers indicates misspecification of the traditional demand equation; there may be several reasons for the misspecification, including income differences, the ability to itemize deductions, or the reporting behavior of taxpayers). "Itemizers have a tax incentive to keep track of their gifts, while nonitemizers do not. This could lead to systematic difference in self-reported levels of giving." Brown, *supra*, at 387-89. Another possible explanation is that in low- and moderate-income data samples, a high proportion report zero gifts that estimation techniques do not account for, resulting in the non-negativity constraint that builds up observations at zero giving. *Id.*

For a complete discussion of prior studies and their contradictory findings, see Robinson, *supra*.

¹¹² Choe & Jeong, *supra* note 103, at 108; Robinson, *supra* note 111, at 56-57. See also Brown, *supra* note 110, at 394.

nonitemizers was no different from the behavior of taxpayers who itemize.¹¹³

Relying on empirical evidence, Yong S. Choe and Jinook Jeong argue that when research is focused on the after-tax cost of the giving of middle- and low-income individuals, their behavior differs little from the behavior of high-income individuals. It thus makes little sense to deny middle- and low-income taxpayers the same benefit that is enjoyed by high-income charitable givers.¹¹⁴ Granting any different degree of relief egregiously violates the equity principle because it has also been shown that middle- and low-income individuals actually contribute a greater percentage of their income¹¹⁵ for redistributive purposes. For low-income individuals, the sacrifice is greater.

Denying the deduction in the face of evidence that middle- and some low-income individuals respond to the tax incentive has been typically justified because "some inequality is the inevitable consequence of progressive taxation."¹¹⁶ This justification, however, lacks persuasive merit. Refusing a deduction entirely to these groups breaches a basic tenet of the progressive rate structure. Rather than resolving the issue, policy makers simply grant no tax relief for charitable gifts that are made by less affluent individuals. "It is as if in choosing a tax structure, the polity were a lost traveler faced with a selection of equally trodden paths. Lacking any convincing rationale to turn right or left, the traveler continues on the path that leads straight ahead."¹¹⁷

¹¹³ Robinson, *supra* note 111, at 57-58 (stating that after correcting for reporting behavior, nonitemizer charitable behavior was indiscernible from itemizer behavior). *See also* WOLPERT, *supra* note 12, at 28 (stating that evidence shows that the donations among the 81 million nonitemizers slowed substantially after the Tax Reform Act of 1986, which eliminated the nonitemizer deduction, especially among middle-income households).

¹¹⁴ Choe & Jeong, *supra* note 103, at 38 (stating that, if middle- and low-income taxpayers have the same price sensitivity as high-income taxpayers to the cost of giving, "the distributional equity problem may be more serious when a deduction is denied for contributions made by [middle- and low-income] taxpayers"). *See generally*, Brown, *supra* note 110. *Cf.* Robinson, *supra* note 111, at 56-58 (stating that the results of the study generally suggest the "charitable deduction may be an efficient subsidy only for high-income [in excess of \$100,000] taxpayers and that relatively little additional giving is tax-induced for middle and low income taxpayers"; future research into an "estimation of the demand for charitable giving should take into account the possibility that the charitable giving or reporting behavior may be different for nonitemizers and itemizers").

¹¹⁵ *See infra* note 127 and accompanying text.

¹¹⁶ Michael J. Boskin, *Estate Taxation and Charitable Bequests*, 5 J. PUB. ECON. 26, 27 (1976). "The differing rates of subsidy are merely an inevitable by-product of the progressive rate structure itself"; CLOTFELTER, *supra* note 104, at 285 (citing generally Richard E. Wagner, *Death Taxes and Charitable Bequests: A Survey of Issues and Options*, in RESEARCH PAPERS 2337-52 (Commission on Private Philanthropy and Public Needs, Department of Treasury ed., 1977)). The differing subsidy rates based on income exist because "the rate of subsidy tends to rise with income because the marginal rate rises with income." *Id.*

¹¹⁷ Bankman & Griffith, *supra* note 4, at 1914 (using this metaphor when discussing explanations for the default assumption that favors a proportionate tax over a progressive tax).

IV. THE DEDUCTION RESULTS IN UNFAIR ALLOCATION OF POWER AND INFLUENCE

A. DECIDING WHICH CHARITIES ARE FUNDED

Decisions about federal funding for public goods are usually made by Congress among competing interests. But a very large percentage of wealth is redistributed through a charitable tax deduction that permits individuals to choose how to distribute the public's money. The individual chooses by deciding to which charitable activities to contribute. This type of indirect support for charitable organizations permits a donor to exercise "a form of self-government . . . that parallels, complements and enriches the democratic electoral process itself."¹¹⁸ The donor is essentially "saying with his or her dollars what needs should be met, what objectives pursued, what values served."¹¹⁹ However, the current deduction has actually resulted in philanthropy's playing a relatively small role in redistribution¹²⁰ because only wealthy taxpayers determine the charities that benefit from charitable gifts.¹²¹ It is therefore not surprising that the source of funding significantly influences the distribution of charitable benefits. The private foundation is a common mechanism for making charitable gifts by the wealthy and is a prime example of the power of wealthy individuals to control the distribution of public funds. "[P]rivate economic power is being deployed, often dynastically, through the device of the charitable foundation and the power it gives the founder and the founder's family to select the objects of their charitable bounty and to manage the charitable assets."¹²² Thus, "the distributional impact of the charitable deduction should go beyond conventionally measured benefits

See also *id.* at 1914 (citing THOMAS SCHELLING, *THE STRATEGY OF CONFLICT* 53-80 (1960) for the proposition that people tend to settle on the solution that is most prominent or conspicuous when solving problems as part of a group).

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Tom Bethell, *Welfare Arts*, 53 PUB. INTEREST 134, 134-38 (1978) (arguing that arts funding is no more than an income-transfer program for upper middle-class); Anne Lowrey Bailey, *Private Health Clubs Assail Tax Exemption of "Yuppie" YMCAs with Fancy Facilities*, CHRON. PHILANTHROPY, May 30, 1989, at 1 (reporting accusations that YMCA seeks only affluent members); William Vickery, *One Economist's View of Philanthropy*, in PHILANTHROPY & PUB. POL'Y 31-56 (Frank Dickinson ed., 1962) (arguing that the role of philanthropy in redistribution is relatively slight).

¹²¹ See *infra* notes 133-42 and accompanying text discussing the point that low-income taxpayers' preferred charities receive no subsidy for contributions. See also TERESA ODENDAHL, *CHARITY BEGINS AT HOME* 3 (1990) (arguing that wealthy philanthropists divert decision-making in the arts, culture, education, health, and welfare from elected officials to a private power elite).

¹²² John G. Simon, *Charity and Dynasty Under the Federal Tax System*, 5 PROB. LAW. 1, 5 (1978).

to include the distribution of economic power" because the deduction concentrates power at the upper-income levels.¹²³

Individuals account for the largest group of charitable donors,¹²⁴ and the higher an individual's gross income, the higher the amount in charitable contributions.¹²⁵ Survey data show that less wealthy individuals donate a higher proportion of their income to charity.¹²⁶ Households earning a relatively small portion of total income account for a disproportionate share of all contributions. It would be logical to make the reward for contribution proportional to the degree to which an individual sacrifices.¹²⁷ The tax code, however, denies middle- and low-income taxpayers any tax benefit. If we wish to encourage a generous rate of charitable giving, we must reward those who give the greatest proportion of their income.¹²⁸

Individuals contribute to organizations that perpetuate their interests and concerns, thus allowing these individuals to benefit, at least indirectly,¹²⁹ from their own generosity. Wealthy individuals tend to support upper-class, "high-brow" programs such as public television, the symphony, opera, museums, and theater.¹³⁰ Equally important, wealthy indi-

¹²³ CLOTFELTER, *supra* note 104, at 287.

¹²⁴ GIVING USA 1995, *supra* note 39, at 47 (reporting that in 1994, living individuals gave 80.9% of all charitable contributions in the United States which totaled \$105.09 billion). Charities collected approximately \$8.77 billion (6.8%) through bequests. *Id.* at 59. \$6.11 billion (4.7%) came from corporations. *Id.* at 77. Foundations made grants totaling \$9.91 billion (7.6%) to non-profits. *Id.* at 63. Transfer tax provisions which permit a deduction can be found in § 2055 of the Internal Revenue Code (the estate tax area), I.R.C. § 2055 (1996), and in § 2522 (the gift tax area), I.R.C. § 2522 (1996).

¹²⁵ CLOTFELTER, *supra* note 104, at 20 (presenting 1973 survey data that covers both itemizers and nonitemizers and shows that households contributing more than 20% of their income accounted for only 11% of income but over 60% of all contributions; households accounting for 55% of income, however, accounted for only 8% of all gifts).

¹²⁶ A recent survey revealed that "[w]hile a smaller proportion of lower income households than higher income households contributed, they gave a higher percentage of household income to charity than higher income households." VIRGINIA A. HODGKINSON & MURRAY S. WEITZMAN, *GIVING AND VOLUNTEERING IN THE UNITED STATES: FINDINGS FROM A NATIONAL SURVEY 2* (1992). See also Lester M. Salamon, *Social Services, in WHO BENEFITS FROM THE NONPROFIT SECTOR?* 134, 159 (Charles T. Clotfelter ed., 1992) (finding that giving is regressive because the poor contribute a greater percentage of their income than the wealthy).

¹²⁷ Paul McDaniel, *Federal Matching Grants for Charitable Contribution: A Substitute for the Income Tax Deduction*, 27 TAX L. REV. 377, 394 (1972) ("This seems to call for a system which increases the reward as the individual sacrifices a greater portion of his income to charity.").

¹²⁸ *Id.*

¹²⁹ See Rev. Rul. 78-232, 1978-1 C.B. 69 (disallowing a deduction if the donor receives a direct benefit in exchange for a contribution).

¹³⁰ ODENDAHL, *supra* note 121, at 16 (citing generally NATHAN WEBER, *GIVING USA* 1988 (1988)). See also CLOTFELTER, *supra* note 104, at 283; Wiedenback, *supra* note 41, at 101; Martin Feldstein, *The Income Tax and Charitable Contributions: Part II — The Impact On Religious, Educational and Other Organizations*, 28 NAT'L TAX J. 209, 224 (1975).

viduals enjoy disproportionately these activities.¹³¹ On the other hand, the less wealthy tend to give to other individuals,¹³² churches, professional associations, and community welfare organizations.¹³³ Such charitable giving promotes pluralism.¹³⁴ Unfortunately, relatively few nonprofit organizations serve primarily poor- or moderate-income persons.¹³⁵ Some middle- and virtually all low-income taxpayers donate to organizations that they consider likely to serve their needs — mutual aid associations,¹³⁶ for example, and churches.¹³⁷ “Philanthropy and everyday helping behavior are part of an informal mutual insurance pact [T]his kind of giving brings the benefit of potential return aid.”¹³⁸

To some extent, then, charitable giving by high- and low-income taxpayers alike may be founded on enlightened self-interest. But only the self-interest served by charitable giving of high-income taxpayers is subsidized. Unfortunately, the tastes and preferences of the high-income group serve neither the needs nor interests of both a majority of American taxpayers and the neediest people of our society. Under the tax code, the high-income group wields a disproportionate amount of power and

131 JULIAN WOLPERT, *PATTERNS OF GENEROSITY IN AMERICA: WHO'S HOLDING THE SAFETY NET?* 7 (1993). See also Gergen, *supra* note 65, at 1446, 1446 n.186 (1988) (stating that public television viewers tend to be high income taxpayers and suggests that the disparity is even greater with regard to other cultural charities); Dick Netzer, *Arts and Culture, in WHO BENEFITS FROM THE NONPROFIT SECTOR?* 174, 174 (Charles T. Clotfelter ed., 1992) (“The creation of nonprofit organizations to produce cultural services in the nineteenth century was, in part, done to elevate and improve the working classes However, the redistributive goal from the outset often was very secondary to the primary goal of establishing clubs to make possible cultural experiences that would be enjoyed . . . by the relatively educated and affluent upper-middle-class.”)

132 GIVING USA 1995, *supra* note 39, at 53.

133 CLOTFELTER, *supra* note 104, at 283; ODENDAHL, *supra* note 121, at 17.

134 See Gergen, *supra* note 65, at 1448 (“A deduction for gifts to social welfare charities . . . has a desirable redistributive effect” and “[t]he benefit of a deduction to the needy, if it increases giving, is likely to be enormous Any movement of resources far down the income scale is likely to enhance aggregate welfare because a poor man will think more of what a dollar buys than does a rich man”). But see ODENDAHL, *supra* note 121, at 17 (“But the lack of funding . . . of most middle-class and lower-class nonprofit ventures . . . counteract their concerted potential for power.”).

135 See ODENDAHL, *supra* note 121, at 3 (citing Lester Salamon, et al., *Partners in Public Service: Government and the Nonprofit Sector in the Welfare State*, in Working Papers 3-38 (Independent Sector and United Way Institute eds., 1986); WOLPERT, *supra* note 131, at 27. See also Salamon, *supra*, note 126 at 159 (questioning the redistributive effect of private philanthropy’s contribution to human services). “Compared to other segments of the nonprofit sector, . . . the human services agencies seem to focus more heavily on the poor, but . . . most agencies focus primarily on the nonpoor, and most of the resources go to persons other than the poor.” *Id.* at 150.

136 See *supra* notes 173-194 and accompanying text (describing the tradition of giving in African American, Asian American, and Latino communities as rooted in principles of reciprocal giving, sharing, and caring).

137 CLOTFELTER, *supra* note 104, at 37.

138 *Id.* at 37-38.

influence in shaping institutions and their priorities.¹³⁹ On the other hand, the Internal Revenue Code neither encourages nor subsidizes middle- and low-income taxpayers through the tax law, and it thus fails to confer a benefit for the public good. Despite this redistributive paradox, the policy of preference can be altered by rewarding middle- and lower-income taxpayers for their generosity. This change would encourage these taxpayers' gifts to charity, and it would be fair. It would also be a sign that both the givers and the recipients are important — not only as people who pay a substantial amount in income taxes, but also as people who contribute to the common good and make our society a better place. Thus, the tax law would permit self-interested micro-behavior from which we all can collectively benefit and enlighten our society.

B. INEQUALITY OF OPPORTUNITY

Without a change in policy to promote enlightened self-interest, we undermine the American ideal of equality of opportunity. At present, tax policy reinforces power, influence, and inequality in our society, and these elements of structural elitism pass from one generation to the next.¹⁴⁰ Even if we tolerate some inequality, we still must intervene on behalf of the less wealthy and less powerful, for when we do, we check cumulative inequality, which, unchecked, grows over generations.¹⁴¹ I am asserting that a *Pareto-superior* tax policy permits the same income tax relief to low, moderate, and wealthy taxpayers.¹⁴² Although the tax deduction will not give low income taxpayers dramatically more after-tax income, the marginal increase can, at the very least, be saved or invested.¹⁴³

In absolute terms, the wealthy can contribute more to charity than the poor, but the inequality in income cannot justify the wealthy's power and influence.¹⁴⁴ More financial ability to give should not be a basis for rewarding the rich for giving while ignoring the majority of tax return

¹³⁹ See Simon, *supra* note 122, at 56 (quoting William Vickery: "The tastes and preferences of high income people . . . are permitted to exert an excessive influence . . ."). See also CLOFFELTER, *supra* note 104, at 287 ("Charities and charitable activities supported by wealthy people receive disproportionate encouragement.").

¹⁴⁰ See generally Simon, *supra* note 122 (arguing that foundations help promote dynastic wealth).

¹⁴¹ RAWLS, *supra* note 96, at 276. This purported check is in the form of transfer taxes.

¹⁴² See *id.* at 302. *Pareto-superior* tax policy is consistent with Rawls's Second Principle of general equality and his goal of maximizing the financial position of those who are the worse off.

¹⁴³ The kind of investment I have in mind is investment in human capital to give children access to education, health care, and culture — facilities which all contribute to uplifting people and securing opportunity and dignity.

¹⁴⁴ The common argument in support of the unequal treatment between high- and low-income groups is that the wealthy actually give more in absolute dollar amount.

filers who make charitable gifts. According to John Rawls, we can only accept social and economic inequality if it raises the position of the worst off and if it grants to everyone "fair equality of opportunity."¹⁴⁵ Fair equality of opportunity is not available to all taxpayers now because tax relief for gifts to charity is only available to the taxpayers with higher incomes.

Rawls's concept of justice seems to allow for inequality if, as a result of the inequality, greater opportunity is enjoyed by those who are not afforded the expenditure power. Thus, inequality is unacceptable when the "expenditure power opportunity" afforded through tax relief is denied to those of moderate or modest means.¹⁴⁶ Whether this inequality is acceptable turns on whether the benefits that are made available through the generosity of the wealthy "trickle down" to the less wealthy. But we know that contributions of the wealthy do not reach the "truly needy"¹⁴⁷ and that the bulk of charitable donations by the wealthy do not reach most of the people whose incomes are far below the donor's income level.¹⁴⁸

In 1975, charitable gifts that were made to accomplish social change or to assist the poor were meager compared to the charitable contributions of the wealthy to the arts, education, and the like.¹⁴⁹ Since 1975, things remain much the same. Human services organizations are experiencing a decline in individual contribution.¹⁵⁰ In 1994, for example, giving to human service organizations was estimated at \$11.71 billion — a decline of 6.05%, the lowest level of giving to organizations since the mid-1980s.¹⁵¹ From 1975 to 1995, giving to education, health and arts, and culture and humanities increased by 8.51%, 6.46%, and 1.22%, respectively.¹⁵² How do we explain this disparity in the two rates of giving? According to some studies, the nonprofit human service sector does not target the poor,¹⁵³ and only a small portion of the agencies that serve the poor provide basic necessities such as food, shelter, and financial

¹⁴⁵ See RAWLS, *supra* note 96, at 302.

¹⁴⁶ *Id.* at 303 ("All social primary goods — liberty and opportunity, income and wealth, and the bases of self-respect — are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favored.").

¹⁴⁷ See, e.g., Lisa Crooms, *Don't Believe the Hype: Black Women, Patriarchy and the New Welfareism*, 38 How. L.J. 611 (1995).

¹⁴⁸ See *supra* notes 131, 140, and accompanying text.

¹⁴⁹ The Donee Group, *supra* note 32, at 58.

¹⁵⁰ GIVING USA 1995, *supra* note 39, at 107, 180-81 (including in this category organizations that address public protection, employment, food for the needy, homelessness, public safety, recreation, and youth development).

¹⁵¹ *Id.* at 26.

¹⁵² *Id.*

¹⁵³ This fact is ironic; the human or social service area is the one area of the nonprofit sector where one would expect to find "charity" that more closely parallels the dictionary's definition of the word.

assistance.¹⁵⁴ Most nonprofit human service agencies focus on people who are not poor, and most of the resources go to these people.¹⁵⁵ This decline cannot be redressed at present because our current tax policy does not encourage enlightened, self-interested giving to the truly needy and, at the same time, denies to the poor an equal opportunity of expenditure power. Current policies encourage structural inequality by maintaining the maldistribution of charity funds. Indeed, it appears that historic maldistribution of income becomes even worse under our current tax policy.

Consequently, high-income people have power, clout, and access to resources that other people do not. The tax code favors this group over citizens with dramatically less income.¹⁵⁶ I am not suggesting that philanthropists are not "genuinely civic-minded or do not do good a lot of good for society. They are and do."¹⁵⁷ My point, however, is that the present system of philanthropy — aided by the tax law — reduces the extent to which basic human services reach all Americans, especially now, when this country faces a rapidly growing and more desperate need for human services.

V. ENCOURAGING A COMMUNITY OF INDIVIDUAL RESPONSIBILITY

[T]he so-called "tax incentives" for charitable giving . . . are so extravagantly discriminatory as between poor and rich donors that for the social-action movements they are effectively meaningless as a help in soliciting individual gifts.

The tax system as a whole is of no assistance in enabling them to be self-supporting through the contributions of their own members. Rather, it condemns them to dependence on baronial benefactors.¹⁵⁸

¹⁵⁴ Estelle James, *Commentary*, in *WHO BENEFITS FROM THE NONPROFIT SECTOR?* 244, 244-48 (Charles T. Clotfelter ed., 1992). See also WOLFERT, *supra* note 131, at 27, 38 (reporting that service disparities are least in the areas of health, education, and arts, and greatest in the areas of social and welfare).

¹⁵⁵ GIVING USA 1995, *supra* note 39, at 30 ("Though charitable giving increased soundly in 1994, it was not necessarily allocated to the charities with substantial programs to help those who cannot afford to pay for essential goods and services."); James, *supra* note 154, at 149.

¹⁵⁶ See ODENDAHL, *supra* note 121, at 233 ("[R]ich people [do not] run all the private cultural, educational, health and welfare organizations . . . they do have the strongest voice in many of the biggest, most prestigious enterprises and institutions."). See also ROBERT A. DAHL, *DILEMMAS OF A PLURALISTIC DEMOCRACY: AUTONOMY VS. CONTROL* 47 (1982) ("The unequal resources that allow organizations to stabilize injustice also enable them to exercise unequal influence in determining what alternatives are seriously considered.").

¹⁵⁷ ODENDAHL, *supra* note 121, at 183.

¹⁵⁸ WALDEMAR A. NIELSON, *THE ENDANGERED SECTOR* 164 (1979).

It is a truism: The wealthy help themselves.¹⁵⁹ Not only is the current tax policy driven by the people with money, power, and clout, but tax policy also encourages welfare for the rich. This country must encourage the same kind of voluntary welfare between low- and middle-income taxpayers. In the face of the growing need for human services, voluntary transfers of wealth not only promote self-reliance but also encourage individual responsibility. In this way, we can change the truism above to "I am my brother's keeper." Attention is most often focused on the moderate- and low-income group as recipients of charity. In reality, however, this group of taxpayers increases its giving each year. Therefore, we must encourage individual responsibility by strengthening the philanthropic potential of middle- and lower-income individuals. By strengthening this group, we raise and direct more public money to meet the greatest human needs. Any effort to strengthen giving in this group will uncover centuries-old cultures of giving and sharing by people in the middle- and low-income groups — groups that are ignored by mainstream philanthropy and tax policy.¹⁶⁰ The discourse on tax policy has been directed by the wealthy and paid for by the disempowered. This fact typifies Paulo Friere's "false generosity."¹⁶¹ The result is that as charitable giving and government benevolence decline, the truly needy must become individually responsible and self-reliant. Is it a coincidence, then, that as government benevolence is shrinking, multicultural pluralism is on the rise? Shrinking government welfare and the rapid growth of minority populations will undoubtedly change the historic balance of private generosity with public benevolence.¹⁶² The order of things is changing.

America's demographics are changing, too. We are on the brink of changing into a new society in which the majority of citizens are of non-European descent.¹⁶³ This demographic change will alter our culture,

¹⁵⁹ See generally ODENDAHL, *supra* note 121; WOLPERT, *supra* note 131, at 27.

¹⁶⁰ Cf. STEVEN L. PAPROCKI & ROBERT O. BOTHWELL, *CORPORATE GRANTMAKING: RACIAL/ETHNIC POPULATIONS* iii (1994) (encouraging corporate grantmakers to be responsive to the public service initiatives of racial and ethnic populations).

¹⁶¹ FRIERE, *supra* note 74, at 26 ("Any attempt to 'soften' the power of the oppressor in deference to the weakness of the oppressed almost always manifests itself in the form of false generosity; indeed, the attempt never goes beyond this.").

¹⁶² James Joseph, *Black Philanthropy: The Potential and Limits of Private Generosity in a Civil Society* 2 (unpublished manuscript, on file with the author).

¹⁶³ Barbara Vobejda, *Births, Immigration Revise Census View of 21st Century*, WASH. POST, Dec. 4, 1992, at A10 ("By the middle of the next century, virtually half of the population will be made up of blacks, Hispanics, Asians and American Indians and our terminology of 'majority' and 'minority' will be meaningless."). See also Joseph, *supra* note 162. Joseph notes that, according to the World Development Forum,

if you lived in a representative global village of 1,000, 564 citizens would be Asian, 210 Europeans, 86 Africans, 80 South Americans and 60 North Americans . . . 300 Christians (183 Catholics, 84 Protestants and 33 Orthodox), 175 Muslims, 128

values, attitudes, and social vision, and these various groups will undoubtedly affect the way in which Americans meet social needs and solve social problems. Each cultural group of Americans reflects its own cultural beliefs and values in their philanthropic efforts. As such, gift giving, financial assistance, sharing, and the distribution of wealth all have cultural dimensions.¹⁶⁴ We should recognize and acknowledge that these diverse groups all have a history of philanthropy that enriches and supplements¹⁶⁵ the dominant philanthropic culture.¹⁶⁶

In what follows, I provide an overview of the culture of non-European people, a culture that I argue will shape our future social and tax policy in America. To this end, I discuss African Americans, Asian Americans, and Hispanics. I focus on these groups because immigration trends and birth rates indicate that they will grow enormously and significantly exceed the population of the current majority. Furthermore, a disproportionate percentage of low- and middle-income individuals represent ethnic minorities.¹⁶⁷

A. AFRICAN AMERICAN PHILANTHROPY

African American traditions of benevolence and charitable giving, as well as of self-help, date back to the early colonial era. Unfortunately, historical accounts have largely ignored or diminished its importance.¹⁶⁸

Hindus, 55 Buddhists, 47 Animist and 210 from other small religious groups or atheists. Of these 1,000 people, 60 would control half the total income, 500 would be hungry, 600 would live in shanty towns and 700 would be illiterate.

Id. COUNCIL OF FOUNDATIONS & ASSOCIATION OF BLACK FOUNDATION EXECUTIVES, DONORS OF COLOR: A PROMISING NEW FRONTIER FOR COMMUNITY FOUNDATIONS iii (1993) ("U.S. Census Bureau . . . population projections indicate that by 2050 non-whites will comprise 49 percent of the population if the United States.").

¹⁶⁴ See generally MARCEL MAUSS, *THE GIFT: FORMS AND FUNCTIONS OF EXCHANGE IN ARCHAIC SOCIETY* (Ian Cunnison trans., 1966) (1954).

¹⁶⁵ See generally FOUND. NEWS, May-June 1990 (providing complete information on the role, status, and traditions of minority groups in philanthropy and vice versa).

¹⁶⁶ See Marsha Jean Darling, *We Have Come This Far by Our Own Hands: A Tradition of African American Self-Help and Philanthropy and the Growth of Corporate Philanthropic Giving to African Americans*, in AFRICAN AMERICANS AND THE NEW POLICY CONSENSUS: RETREAT OF THE LIBERAL STATE? 121, 138 (1994) (arguing that the dominant culture reflects white Anglo-Protestant beliefs about the relation of the individual to his or her property rights which drive "ideas, values and choices about relationships between humans and humans, and humans and the natural world").

¹⁶⁷ In 1995, of the 13.8% of Americans who lived below the poverty level, 11.2% were White, 29.3% African Americans, 30.3% Latino, and 14.6% Asian Americans or Pacific Islanders. U.S. CENSUS BUREAU, OFFICIAL STATISTICS (1995). See generally EDWARD N. WOLF, *TOP HEAVY: A STUDY OF THE INCREASING INEQUALITY OF WEALTH IN AMERICA* 11, 12, 17 (1995) (showing that the gap in the wealth between white and nonwhite households increased between 1967 and 1987 and that any gain in wealth and income was enjoyed by the upper half of the distribution rather than those who are less well off).

¹⁶⁸ Darling, *supra* note 166, at 127. See also Emmett D. Carson, *Despite Long History, Black Philanthropy Gets Little Credit as 'Self-Help' Tool*, Focus, June 1987, at 3-4; Charles

Black benevolence and philanthropy grew directly out of the unique history of African Americans in the United States, and studies reveal that the tradition of giving initially developed as a mechanism for survival. As early as 1789, organized African American philanthropy formed self-help mutual aid societies and fraternal orders to provide financial assistance and services to free Blacks. The manumission aid societies provided assistance to freed slaves. These organizations provided resources, skills training, a sense of community, and self-identity for Blacks. They also helped socialize later generations.¹⁶⁹ Black voluntary associations sprang up wherever a community of Blacks lived.¹⁷⁰ However, despite their worthwhile functions, many states banned all Black "literary, dramatic, social, moral or charitable societies,"¹⁷¹ requiring benevolent organizations to operate in secret.

Importantly, while a few well-to-do Blacks were philanthropists, the bulk of giving was made by poor and working-class African Americans. Despite their meager resources, they accomplished a great deal — extraordinary achievements considering the oppressive racism, paternalism, poverty, and exclusion Blacks faced at the time.

Historically, the Black church has been the core of philanthropy in the African American community. It received charitable gifts and gave charitable gifts to individuals and other institutions. It was the moral and political energy of the Black church that spearheaded the civil rights movement.¹⁷²

During and after Reconstruction, these organizations emphasized self-help, participatory democracy, philanthropy, civic responsibility, and social protest. They no longer focused solely on aiding individuals within their immediate community.¹⁷³ Today, apart from the Black church, African Americans have more institutional mechanisms for charitable giving, including black foundations and the private philanthropy of

B. Rangel, *Charitable Giving and the Gross National Product*, BLACK SCHOLAR, Mar. 1976, at 2-4. For a detailed discussion of African American self-help traditions and the development of white philanthropy particularly in the black community, see Darling, *supra* note 166.

¹⁶⁹ Darling, *supra* note 166, at 133-34 (citing John L. Rury, *Philanthropy, Self-Help, and Social Control: The New York Manumission Society and Free Blacks, 1785-1810*, 46 PHYLON 231-40 (1985)). See also EMMETT D. CARSON, A HAND UP: BLACK PHILANTHROPY AND SELF-HELP IN AMERICA 20-21 (1993). Mutual aid and benevolent societies provided sickness and disability payments, widow's support, and aid to orphans and to members and nonmembers alike. *Id.*

¹⁷⁰ Darling, *supra* note 166, at 132-33.

¹⁷¹ See CARSON, *supra* note 169, at 11.

¹⁷² See ERIC FONER, A SHORT HISTORY OF RECONSTRUCTION 41 (1990) (commenting that the church was the first social organization controlled by Blacks in America and it was central to the black community). See generally TAYLOR BRANCH, PARTING THE WATERS: AMERICA IN THE KING YEARS 1954-63 (1988).

¹⁷³ See generally David C. Ruffin, *Not for Survival Alone*, FOUND. NEWS, May-June 1990, at 52-57.

wealthy blacks — both which reflect significant assimilation of the African American customs of giving.¹⁷⁴ Moreover, African Americans are substantial givers through federated campaigns.¹⁷⁵ Despite this historical trend in charitable giving by African Americans, some Whites believe that “African Americans are unwilling to participate in the processes of hard work, frugality, self-help, and charitable giving that other upwardly mobile groups acknowledge as legitimate and essential cultural values.”¹⁷⁶ Contrary to this perception, however, the legacy of self-help plays a key role in the development of the African American community. And if lawmakers really want a smaller federal government to accomplish more, then it seems that Congress, through the tax code, must encourage individual responsibility and self-reliance in the African American community. It can most effectively achieve this goal by acknowledging the legacy of self-help¹⁷⁷ and by granting African American and all other low- and middle-income taxpayers an allowance for charitable gifts.

B. ASIAN AMERICAN PHILANTHROPY

Very little has been written about Asian American charitable giving. Like the false perception of African American giving, there is the perception that Asian Americans are “takers and not givers.”¹⁷⁸ However, this perception belies the charitable practices of the many subgroups¹⁷⁹ in the Asian American community. The first generation of Asian Americans came to this country in the 1800s from China, Japan, and the Philippines. After racially-based immigration quotas were lifted in the 1960s, educated immigrants arrived and, after the fall of Vietnam, Laos, and Cambodia, were followed by a great number of refugees from southeast Asia. Each Asian American group brought a different custom and culture, but all experienced some form of prejudice and racism in this country.¹⁸⁰ Their experiences and cultures have shaped their assimilation into mainstream American culture and, to the extent that this assimilation has

¹⁷⁴ *Id.*

¹⁷⁵ See generally CATHIE J. WITTY AND JACQUELINE URLA, *WORKPLACE GIVING: EMPLOYEE ATTITUDES, PERCEPTIONS AND BEHAVIOR*: INSTITUTE FOR NONPROFIT ORGANIZATION MANAGEMENT, (1989).

¹⁷⁶ Darling, *supra* note 166, at 123.

¹⁷⁷ See *id.* at 138 (citing shared and extended kinship, the common good versus the individual good, and shared resources as a cultural ethos rooted in African First Principles which are defined as a tradition of self-determination and universal human dignity).

¹⁷⁸ ROBERT LEE, *GUIDE TO CHINESE AMERICAN PHILANTHROPY AND CHARITABLE GIVING PATTERNS* 6 (1990).

¹⁷⁹ The Asian American community is quite diverse. There are more than twenty groups from Asia and the Pacific Islands. These groups speak different languages, observe different customs, and come from different native cultures.

¹⁸⁰ LEE, *supra* note 178, at 9-12.

been slow, they now continue some of their ethnic-specific practices and traditions.¹⁸¹

In spite of the cultural differences among the ethnic subgroups, commitment to family and community are at the heart of philanthropy in the entire Asian community. Buddhism, Confucianism, and Taoism provide the cultural framework of respect for elders, service, and compassion toward all human beings. In the traditional patrilineal systems of kinship and authority, the extended family primarily provides assistance, self-help, and caretaking for individuals.¹⁸² This social structure forms the root of all Eastern Asian cultures.¹⁸³ Every person expects that, at some point, they will each be cared for by another. Thus, giving is a ritual rather than sporadic "charity."¹⁸⁴

Asian Americans give a substantial percentage of their income to both Asian and non-Asian American organizations.¹⁸⁵ This generous behavior toward Asian organizations may be influenced by the tradition of supporting the family.¹⁸⁶ However, a greater sense of financial obligation to the family clearly does not reduce incentives to give outside the family, for Asian Americans contribute substantially to non-Asian groups — especially in education and federated campaigns.¹⁸⁷

C. HISPANIC PHILANTHROPY

Like Asian American philanthropy, very little is also written about Hispanic philanthropy. And like Asian Americans, Hispanics are culturally and racially heterogeneous and make up a very diverse population.¹⁸⁸ As with African and Asian Americans, tenets of family-based self-help permeate the Latino cultural tradition. Giving is perceived as sharing rather than charity.¹⁸⁹ However, the pattern of giving by Hispanics also appears to be a reflection, in part, of how long they have been part of American society. For example, Mexicans who have been in this country for many generations are more likely to give in formal ways — pri-

¹⁸¹ *Id.* at 12.

¹⁸² Stella Shao, *Asian American Giving: Issues and Challenges (A Practitioner's Perspective)*, 8 *NEW DIRECTIONS IN PHILANTHROPIC FUNDRAISING* 53, 56 (1995). For example, the Chinese tradition dictates that the younger family members give support, care, and respect for the older family members. BRADFORD SMITH ET AL., *ASIAN AND HISPANIC PHILANTHROPY* 30-31 (1992).

¹⁸³ See generally Shao, *supra* note 182, at 56.

¹⁸⁴ SMITH ET AL., *supra* note 182, at 54. See also LEE, *supra* note 178, at 30.

¹⁸⁵ Shao, *supra* note 182, at 53, 57-58.

¹⁸⁶ See SMITH ET AL., *supra* note 182, at 27.

¹⁸⁷ *Id.* at 59.

¹⁸⁸ For purposes of this article, Hispanics in this country include Puerto Ricans, Cubans, and Mexican-Americans.

¹⁸⁹ SMITH ET AL., *supra* note 182, at 127-43.

marily through recognized organizations.¹⁹⁰ While those who have resided in the United States for a shorter period of time give within the tightly-knit family and through community groups, they also give to political and charitable causes through organizations.¹⁹¹ There is a sense of *familia*, however, even with gifts to organizations.¹⁹² It is clear that the structures of support within the family are so important that they undergird Hispanic organizational giving.

D. GIVING AS SHARING

The giving practices of non-European people are rooted in the notion of giving as sharing with expectations of reciprocal sharing, not "charity." Europeans had a similar practice of giving within ethnic groups, but over many years shifted to more general areas of interest. American acculturation and assimilation weaken "non-American" traditional practices over time. However, the ethnic minority groups discussed here have not completely assimilated into American "culture." As a result, they may still prefer some individual giving over organization giving. If so, then the tax code should recognize this fact, as well as the fact that nonwealthy Americans — minority and majority alike — substantially contribute to the common good.

While it appears that Hispanics prefer individual giving over organization giving, other ethnic minorities favor workplace giving over general giving.¹⁹³ These minority groups are a potential source of a general increase in giving, but the increase will happen particularly in the workplace if appropriate solicitation strategies and incentives are used. Minorities rate health and human services as the greatest priority for giving in the workplace.¹⁹⁴

Substantial potential for giving and efficiency in workplace giving campaigns developed and finally became the United Way, a federation of charitable organizations that was created by local business leaders. It ultimately became an annual billion dollar fundraiser for local chapters. Traditional federations such as the United Way have declined in popularity because of the way they have allocated their charitable dollars.¹⁹⁵

¹⁹⁰ *Id.* at 126. Prior to 1848, much of the southwest where Mexican immigration occurs belonged to Mexico. Development of the railroads, which provided jobs after the turn of the century, spawned a surge in the Mexican-American population. During the 1930s, many Mexicans were repatriated to Mexico, and Mexicans who were citizens were often expelled during the Depression and post-World-War-II era. *Id.* at 124-25.

¹⁹¹ SMITH ET AL., *supra* note 182, at 126-27.

¹⁹² *Id.* Even Mexican donors who have lived in this country for many generations indicate in surveys that their giving was motivated by a sense of family. *Id.*

¹⁹³ WITTY, *supra* note 175, at 22.

¹⁹⁴ *Id.* at 13.

¹⁹⁵ Liz Spayd, *United Way Donations Drop for Second Straight Year*, WASH. POST, Dec. 11, 1993, at B1.

The federation historically excluded nontraditional, "controversial," or minority groups and women's agencies from membership by limiting the donors' choices about the allocation of their contributions. It is this exclusivity that gave rise to alternative workplace fundraising. The growth of federations opens up new opportunities for individual giving by many more less wealthy individuals that reaches well beyond the immediate community.¹⁹⁶ Philanthropy coupled with an appropriate tax policy that responds to all income levels can encourage positive attitudes about the need to value, protect, and support community programs.¹⁹⁷

VI. ALTERNATIVES TO THE CURRENT DEDUCTION

The deduction is deemed inefficient and unfair, and it fails to promote pluralism. Thus, we must look at possible substitutes for the deduction. Such alternatives include: a policy of matching grants; nonitemizer deduction; refundable credit; and nonrefundable credit for gifts to organizations that are dedicated to fighting poverty.

A. MATCHING GRANT

A matching grant policy permits a donor's gift to be matched by a grant from the government that goes directly to the charity the taxpayer designates at a predetermined amount.¹⁹⁸ All classes of income would receive the same relative benefit because the matching grant would not be dependent on the taxpayer's income. Proponents of the current tax policy, however, argue that the deduction promotes pluralism. The fact is that the current deduction only promotes pluralism at the upper-income levels — that is, high-income individuals control how public funds will be spent. On the other hand, a matching grants policy promotes multicultural pluralism because all tax return filers who make donations would generate a matching grant.

While the matching grant would eliminate unfairness in the distribution of the subsidy, there are other fundamental questions. Under the

¹⁹⁶ GIVING USA 1995, *supra* note 39, at 49. It is recognized that specific kinds of "asking" affect giving preferences. Being asked to give by someone the potential donor knows or by the clergy are the methods that most likely lead to a contribution. Media reports of poverty rank just below being asked by the clergy as a reason for giving. *Id.* at 49-50.

¹⁹⁷ COUNCIL ON FOUNDATIONS & ASSOCIATION OF BLACK FOUNDATION EXECUTIVES, DONORS OF COLOR: A PROMISING NEW FRONTIER FOR COMMUNITY FOUNDATIONS iii (1993) (The "dramatic change in the demographic makeup of the United States will pose an opportunity . . . to all community foundations. In order to continue building permanent endowments, community foundations should begin thinking about developing strategies to attract donors of color."); WOLPERT, *supra* note 12, at 21 (survey indicating that giving can be increased if more people are asked to contribute, volunteer and have access to payroll deduction plans in the work place).

¹⁹⁸ McDaniel, *supra* note 28, at 378.

Establishment Clause¹⁹⁹ of the United States Constitution, Congress cannot aid religion. Whether the government's matching grants policy would run afoul of the Constitution is an unresolved issue. Thus far, the Court has determined that property tax relief for religious institutions does not violate the First Amendment.²⁰⁰ Under a matching grant policy, the question might turn on whether the Court considers such grants the "functional equivalent" of a tax deduction.²⁰¹ If the grant functions like a deduction, then perhaps the Court would find that it does not violate the Constitution. In contrasting the tax expenditure with a direct-money subsidy, the Court's analysis in *Walz v. Tax Comm'n of New York* rested on the amount and continuing nature of the government's involvement with the religious institutions: "Obviously a direct money subsidy would be a relationship pregnant with involvement and, as with most governmental grant programs, could encompass sustained and detailed administrative relationships for enforcement of statutory or administrative standards, but that is not this case."²⁰² Even if a system of matching grants is the functional equivalent of a tax deduction, however, the question remains whether the system involves more government "entanglement" with religion than is required for a tax expenditure.²⁰³

Proponents of the matching grant anticipate that a switch to grants would continue to induce giving at a level commensurate with the current deduction.²⁰⁴ But it is not clear that matching grants would result in individuals increasing their contributions. It is apparent, however, that given the discrete patterns of giving of high-, middle-, and low-income individuals, a system of matching grants is certain to change how people allocate charitable gifts.

Some fear that matching grants invite political intervention.²⁰⁵ For example, political intervention was on display with the politization of the public funding of the National Endowment for the Arts and Senator Jesse Helm's critique of the artistic choices of some Americans: "The is-

199 U.S. CONST. amend. I ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.").

200 *Walz v. Tax Comm'n of New York*, 397 U.S. 664 (1970) (considering local property tax exemption for churches).

201 Boris Bittker, *Charitable Contributions: Tax Deductions or Matching Grants?*, 28 TAX L. REV. 37, 40-41 (1972); McDaniel, *supra* note 28, at 409-11.

202 397 U.S. at 675.

203 Izzo, *supra* note 65, at 2395; Bittker, *supra* note 201, at 41 ("It is barely possible that some of the [religious institutions'] social welfare activities could be split off sufficiently to gain separate a constitutional status for matching grants . . .").

204 McDaniel, *supra* note 28, at 403.

205 Bittker, *supra* note 201, at 45 (arguing that administrative and Congressional manipulation could compromise donor privacy and institutional independence because protected information would lose statutory privacy protection).

sue . . . really is . . . indecency and rottenness, homosexuality, sodomy, bestiality."²⁰⁶

Whether a system of matching grants is constitutional and free of political manipulation are major issues that are both related to substituting the matching grant for the deduction.²⁰⁷

B. NONITEMIZER DEDUCTION

A nonitemizer deduction permits a charitable contribution deduction for those taxpayers who cannot itemize.²⁰⁸ However, the individual who contributes but does not earn enough to have a tax liability still receives no tax allowance with a nonitemizer deduction. Congress designed the standard deduction to allow a certain level of personal expenses, including an unspecified amount for charitable gifts. However, when we allow a charitable contribution deduction for nonitemizers, we effectively create a double deduction for such contributions.²⁰⁹ The double deduction is the result of the taxpayer's getting both the standard deduction and the charitable contribution deduction.

The deduction for nonitemizers represents a substantial improvement over the current system for many taxpayers. Yet such a deduction provides no allowance to taxpayers who lack taxable income.²¹⁰ Moreover, like the current deduction, the deduction for nonitemizers still grants a disproportionate subsidy for individuals in the high tax bracket. Finally, the nonitemizer deduction is costly if Congress does not correspondingly reduce the subsidy it provides to upper-bracket taxpayers.²¹¹

C. REFUNDABLE CREDIT

A refundable credit benefits taxpayers because it grants the same level of tax allowance for all taxpayers and makes the after-tax cost of a gift to charity independent from income. The credit would be equal to the amount of qualified contribution multiplied by a percentage that would at least maintain the current revenue cost of the expenditure.²¹² Presumably, a revenue-neutral credit would not reduce aggregate giving

²⁰⁶ Izzo, *supra* note 65 at 2394 (citing Patti Hartigan, *Senate Rejects Helms's New NEA Restrictions*, BOSTON GLOBE, Nov. 1, 1991, at 25).

²⁰⁷ See WOLFERT, *supra* note 12, at 29 (arguing that if the federal government transfers responsibility for the safety net to the states, localities, and charities, it should take steps to help these entities bear the increased responsibility of reducing the cost of giving).

²⁰⁸ In 1986, when nonitemizers could take a full deduction for their charitable gifts, they gave about \$4 billion in a single year. Independent Sector Press Release, May 23, 1996.

²⁰⁹ Pearlman, *supra* note 109, at 1140.

²¹⁰ But see *supra* notes 60-61 and accompanying text.

²¹¹ Pearlman, *supra* note 109, at 1140 (noting that the effect on tax revenues of a repeal of the nonitemizer deduction would be substantial: revenues would increase by an estimated \$419 million in 1986 and \$2.687 billion in 1987).

²¹² See, e.g., Izzo, *supra* note 65, at 2398-99, 2398 n.127.

to charities. Empirical studies on price elasticity across income levels are contradictory.²¹³ But if price elasticity is constant and the credit is revenue-neutral, aggregate giving should be unchanged. While it is unclear whether a credit would change aggregate giving, it would affect the allocation of contributions.²¹⁴ Churches and community organizations would gain with a refundable credit.

D. NONREFUNDABLE CREDIT FOR GIFTS TO POVERTY RELIEF ORGANIZATIONS

In 1995, Representatives Joseph Knollenberg (R-Mich.) and Jim Kolbe (R-Ariz.) introduced House Bill 2225.²¹⁵ The bill would create a non-refundable 100% tax credit for up to \$100 per taxpayer per year (\$200 for joint filers) for donations to charities that are engaged in helping low-income Americans.²¹⁶ The legislation converts a tax liability into a charitable donation.²¹⁷ The bill assists individuals who earn 15% or less of the poverty line and ensures that the contributions go to an organization that serves the poor, not the Kennedy Center National Symphony Orchestra. Under the bill, the charitable organization can spend no more than 30% of its aggregate expenses on administration, fundraising, lobbying, and litigation. Any contribution above the credit limit would be tax deductible.

This legislation allows individual taxpayers to decide how a portion of welfare dollars is spent. Under it, "people will have to ask the question: Do I want my dollars to go to a Washington bureaucracy or to the homeless shelter down the street?"²¹⁸ This nonrefundable credit would significantly impact overall giving to organizations which directly serve the poor. It would redistribute income of taxpayers at all income levels equally for gifts to qualified poverty relief organizations, and it would encourage giving by all taxpayers. It also treats each taxpayer identically. Taxpayers who are closest to the grassroots are among the 87 mil-

²¹³ *Id.* at 2399; Wiedenback, *supra* note 41, at 101. See also *supra* notes 111-14 and accompanying text (explaining contradictory studies on the constancy of price across income levels).

²¹⁴ See *supra* notes 130-38 and accompanying text.

²¹⁵ H.R. 2225, 104th Cong. (1995) (popularly known as the Choice in Welfare Tax Credit Act of 1995).

²¹⁶ Low-income is defined in the bill as 150% of the poverty line or below. Currently, this amount would be \$11,205 for one person and \$22,725 for a family of four. *Id.*

²¹⁷ Individuals claiming the credit would be required to indicate on their tax return the amount given and the identification number of the organizations to which they contributed. This amount would be subtracted from their tax liability.

In keeping with revenue neutral rules, the Earned Income Tax Credit would be simultaneously repealed. Whether the Earned Income Tax Credit should be repealed is not addressed here.

²¹⁸ Robert Sirico, *Giving a Boost to Private Charity*, WASH. TIMES, June 1, 1995, at A21.

lion Americans who cannot itemize their deductions. This measure would allow taxpayers to direct a portion of their taxes to programs in their own communities. However, taxpayers who do not earn enough to have taxable income would not receive an allowance. Religious charities — including churches — would qualify if they have specialized ministries that serve the poor.²¹⁹

While this legislation has some appeal, several important concerns arise. Determining how an organization administratively uses the funds would be a problem. No standards exist. Organizations could classify administrative expenses as program expenses to meet the 70% threshold. Furthermore, other nonprofit organizations may well suffer loss in donations because the credit is targeted to organizations that predominately serve the poor and may create a deeper divide between the poor and the rest of the community. Equally significant, many national charities that fight poverty do not limit their services to just the needy and thus may not qualify as donees for the credit. Neither would colleges, universities, and a host of other charitable organizations that do not target the needy.

The bill also imposes an administrative burden. It requires additional record keeping by taxpayers²²⁰ and adds to the Internal Revenue Service's cost of verifying relatively small amounts.²²¹ But taxpayers are already required to maintain records of their contributions.²²² And if we had a meaningful tax allowance for donations to qualified charities, it would probably encourage record keeping by taxpayers who do not already have the need to keep records of their donations.²²³ For those taxpayers who already itemize deductions, this requirement would impose no additional burden. The Internal Revenue Service uses standard verification methods that are adequate to detect fraudulently reported contributions.²²⁴

On the other hand, the additional cost of compliance raises a legitimate issue. The record keeping requirements for eligible organizations would change significantly. Organizations would be required to document income levels of people they serve to ensure that most of these

²¹⁹ Religious-based organizations would qualify if they set up a 501(c)(3) organization that is dedicated to providing services to the poor.

²²⁰ See Clotfelter, *supra* note 109, at 284 (stating that the burden is especially onerous for low- and some middle-income taxpayers).

²²¹ See *supra* note 211 and accompanying text (Costs associated with taxpayer substantiation and Internal Revenue Service verification were reasons for repealing the nonitemizer deduction.).

²²² Treas. Reg. § 1.170A-13(a)(1), (a)(2)(I) (1995) (as amended) (requiring taxpayers to substantiate donations by cancelled check, receipt from the donee, or "other reliable written records").

²²³ See Brown, *supra* note 110, at 389 (commenting that taxpayers who receive no tax allowance for charitable gifts have little incentive to maintain accurate records of such gifts).

²²⁴ See Izzo, *supra* note 65, at 2400-01, 2401 n.143.

people are poor. Most organizations do not currently maintain such records. However, the benefit of no longer denying a tax allowance to the millions of taxpayers who have no voice in the allocation of public funding outweighs any new administrative burdens.

The matching grant proposals have been criticized because they are vulnerable to political intervention.²²⁵ A similar concern is raised with the legislation. The Internal Revenue Service would, under the choice in welfare legislation, continue to determine the qualifications of organizations for the appropriate tax exempt status. Thus, under this bill, no greater opportunity exists than that which already politicizes the process of deciding which organizations would qualify.²²⁶ The concerns cannot easily be dismissed — even when balanced against the benefit of no longer denying a tax allowance to the millions of taxpayers who have no voice in allocation of public funding, the concerns cannot easily be dismissed. The nonrefundable credit for poverty relief is worthy of consideration, but it offers an inadequate solution for tax purposes. Issues of distributional equity, discrimination against nonitemizers, and unfair allocation of power all remain for gifts in excess of \$100 that are donated to organizations other than those dedicated to fighting poverty.

VII. CONCLUSION

Millions of lower- and middle-income individuals already give to charity. They support activities that directly benefit other people on the lower end of the income scale. It is abundantly clear that the need for individuals to support the public interest is growing rapidly and, more specifically, even greater support is necessary for these people because the government safety net has been steadily disappearing since the late 1970s. Encouraging contributions by people who give to organizations that help create, develop, and support opportunities for less affluent people is a step toward providing a "starting advantage."²²⁷ Among lower- and moderate-income taxpayers, such contributions could create a vast constituency for charitable organizations by freeing them from dependency on the wealthy.

²²⁵ See *supra* note 205 and accompanying text.

²²⁶ See Izzo, *supra* note 65, at 2393.

²²⁷ James Tobin, *Considerations Regarding Taxation and Inequality*, in INCOME REDISTRIBUTION 127, 131 (Colin Campbell ed., 1977). See also Robert Woodson, *Dismantle the Poverty Panopticon: Anti-Poverty, ProCommunity*, WALL ST. J., Mar. 22, 1995, at A16 (arguing that, in order to achieve decreased governmental intrusion and a return of authority to self-governing citizens, not only must federal programs be reduced or eliminated, but policies must be created that support and promote grass-roots programs of mutual assistance). Woodson's view is consistent with the stated philosophy of the Contract With America which asks rhetorically, "Isn't it time for the government to encourage work rather than rewarding dependency?" GINGRICH ET AL., *supra* note 11, at 65.

Charity needs to be "uncoupled in the public mind from the idea of private advantage and privilege and reunited with its purpose of serving the public welfare."²²⁸ Providing the same allowance for gifts to charity from taxpayers without regard to the taxpayer's income is a step in the right direction.²²⁹

Granting the tax relief to middle- and lower-income individuals that is now provided to the wealthy not only provides distributional equity, but is good social policy.²³⁰ The value to charity lies both in the additional financial support and the voluntary efforts of the donors.²³¹ Moreover, "if charities are to be given additional responsibilities because they can do a better job than government, they should be helped, not hindered."²³²

We must face the magnitude of the America's social problems. Eliminating social welfare programs without creating policies that encourage mutual support will not change people's lives.²³³ Changing people's lives requires that people believe in their ability to build and sustain organizations and institutions in their communities that counter the corrosive effects of malignant neglect and stereotypes of indifference and dependency. Money channeled to neighborhoods through community-based and grass-roots organizations could help reduce the growing problems of poverty, unemployment, and illiteracy.²³⁴ People very much want to contribute their fair share — if they could find a way to do it effectively. "A lot of people actually see more of a result from the money they give to private organizations: It's closer, it's local, they feel involved."²³⁵ Taxpayers who are closest to grassroots groups are among the millions of Americans who contribute, but who cannot claim a deduction for their contribution.

²²⁸ ALAN PIFER, *PHILANTHROPY IN AN AGE OF TRANSITION* 86 (1984).

²²⁹ See WOLPERT, *supra* note 12, at 29 (stating that if the federal government transfers responsibility for the safety net to the states, localities, and charities, it should take steps to help them bear the responsibility of reducing the cost of giving).

²³⁰ See Tobin, *supra* note 227, at 131 ("Unequal prizes are won in a fair race. But if the starting advantages in the next race are correlated with the order of the finish of the last one, is opportunity equal? Is the race really fair?"). There is a need to encourage redistribution of income indirectly through the tax laws. Cf. Wallis, *supra* note 95, at 135 (arguing that expansion of social programs eliminated the need for the tax system to redistribute income).

²³¹ See HODGKINSON & WEITZMAN, *supra* note 126, at 28 (1995) (showing a correlation between making contributions and volunteering).

²³² WOLPERT, *supra* note 12, at 29.

²³³ Casey, *supra* note 14, at A1 (quoting Glenn Bailey, who runs soup kitchens in Utah without government support: "[I]f [the government] really wanted to get people off welfare, [it would] . . . provide incentives so, when people do pull up their socks, they're rewarded.").

²³⁴ See WOLPERT, *supra* note 12, at 27 (arguing that most charitable organizations which provide for the needy are local, community-based, home-grown, and reflect secular or religious values; they have the infrastructure to do more than they do now).

²³⁵ Casey, *supra* note 14, at A4 (quoting Billy Shore, director of Share Our Strength, which is one of the country's largest food distributors).

Tax law is a basic institution that shapes society and must serve the public good. How can the tax system be changed to serve the interest of society, promote the general welfare, and encourage diversity in the ways we achieve social objectives? An equitable tax system that encourages and affirms charitable giving by the wealthy and non-wealthy alike would be a good place to start.

